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**ATLANTIC COASTAL FISHERIES MANAGEMENT  
COOPERATIVE ACT**

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**HRING**

Atlantic Coastal Fisheries Management... MORE THE

**SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE**

**COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**ON**

**H.R. 2134**

**A BILL TO IMPROVE THE CONSERVATION AND MANAGE-  
MENT OF INTERJURISDICTIONAL FISHERIES ALONG  
THE ATLANTIC COAST BY PROVIDING FOR GREATER  
COOPERATION AMONG THE STATES IN IMPLEMENTING  
CONSERVATION AND MANAGEMENT PROGRAMS, AND  
FOR OTHER PURPOSES**

**MAY 19, 1993**

**Serial No. 103-25**

Printed for the use of the Committee on Merchant Marine and Fisheries



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# ATLANTIC COASTAL FISHERIES MANAGEMENT COOPERATIVE ACT

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WEDNESDAY, MAY 19, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:06 p.m., in room 1334, Longworth House Office Building, Hon. Gerry E. Studds [chairman of the full Committee] presiding.

Present: Representatives Studds, Lancaster, Hamburg, Ravenel, Kingston.

Staff Present: Jeffrey Pike, Jim Mathews, Greg Lambert, Lori Rosa, Jean Flemma, Tom Kitsos, Jill Brady, Margherita Woods, Ed Lee.

## OPENING STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. STUDDS. The Subcommittee will come to order. The Chair announces that the Chairman of the Subcommittee on Fisheries Management, the gentleman from New York, Mr. Manton, is unable to be here, and in order to underline the importance which I attach to this bill, I am going to assume the mantle for the first 20 minutes or so and then be relieved in the Chair by the gentleman from North Carolina, Mr. Lancaster. The Chair apologizes to the witnesses because he himself will not be able to be here in body for the questioning; he will be here in spirit.

The Subcommittee meets today to hear testimony on H.R. 2134, the Atlantic Coastal Fisheries Cooperative Management Act. The goal of this bill is to create a partnership between the States and the Federal Government in protecting and rebuilding our fish stocks along the Atlantic seaboard.

No one disputes that many of these stocks, and the fishermen that rely upon them, are facing exceedingly difficult times. We have all heard the numbers; weakfish landings in the past decade have declined by 85 percent, summer flounder by 70 percent in the last four years. The Commission has written conservation and management plans for many of these species, and States, such as my own State of Massachusetts, have repeatedly instituted the required conservation measures. Unfortunately, implementation among the various States has not been consistent, and fishermen on Martha's Vineyard, Cape Cod, and the south shore of Boston

have watched stocks decline, despite their own personal sacrifices to conserve them.

Faced with a similar crisis in 1984, we produced the Striped Bass Conservation Act. Through sound management, State and Federal cooperation, and strong support from commercial and recreational fishermen alike, that Act appears to have saved the striper and put it well on the road to recovery. Today, fisheries like weakfish and summer flounder may actually be in worse shape than the striper was in 1984, and we must use the successful formula of the Striped Bass Act to bring about the recovery of these stocks as well.

H.R. 2134 authorizes a cooperative effort between the States and the Federal Government to ensure that everyone does their fair share in conserving these species. The responsibility for managing coastal fisheries will, as it should, continue to rest with the States and the Commission, not with the Congress or the Federal agencies. The bill authorizes a Federal role that will make the job of managing the fisheries easier by providing funds for research and by making the resources of the Federal Government available, if needed, to help enforce Commission rules.

Last year, this Committee approved legislation concerning the conservation of the weakfish. While I supported that bill, I said at the time that I would prefer to enact legislation that addresses the needs of all our coastal fisheries. I believe this bill is a significant improvement over last year's effort, and I want to commend those—many of whom are here today—who contributed their time and effort in the drafting of the legislation. I thank you, and I look forward to working with all of you in the coming weeks to move this bill quickly through the legislative process.

Mr. STUDDS. Are there opening statements? The gentleman from South Carolina.

#### STATEMENT OF HON. ARTHUR RAVENEL, A U.S. REPRESENTATIVE FROM SOUTH CAROLINA

Mr. RAVENEL. Thank you, Mr. Chairman. I would like to welcome the representatives from South Carolina here to this hearing today, and I would like to read Mr. Fields' short statement.

"I would like to thank you for calling this hearing on H.R. 2134, a bill designed to improve the management of interjurisdictional fisheries on the Atlantic Coast. Ordinarily, fish stocks are managed by Regional Fishery Management Councils and the National Marine Fisheries Service, or State fishery management agencies for coastal fisheries.

"In an effort to coordinate all of the State laws and Federal regulations that manage fish which migrate between various State and Federal waters, interstate fisheries management commissions have been established to develop and implement management plans for these stocks. Nevertheless, the question arises whether these efforts have effectively managed certain fish stocks on the East Coast."

And I also have a statement here by Mr. Young from Alaska, and I would ask that both statements be entered into the record.

Mr. STUDDS. Without objection.

[Statement of Mr. Young follows:]

## STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, I am pleased that we are considering the regulation of interjurisdictional fisheries. As fish do not understand the boundaries between State and Federal waters, it is important to develop regulatory schemes which manage the species throughout their ranges.

Management of even a single fishery may be difficult. The situation is complicated when numerous States and the Federal Government all have a stake in oversight of a fishery. While the Atlantic, Pacific, and Gulf Coast regions each has a commission to develop regional fishery management plans for coastal fisheries in State waters, the Atlantic States Marine Fisheries Commission, which includes a multitude of States, has a particular problem getting agreement on management measures. Compliance by most States does not lead to recovery of the resource when another State reaps the benefits of its noncompliance. It is vital that we establish a framework to provide rational management of interjurisdictional fisheries.

At the same time, we must be careful not to trample on the rights of individual States to manage their fish and wildlife. I hope that whatever bill we finally approve strikes the proper balance between State and Federal responsibilities.

Mr. Chairman, I look forward to working with you on this important issue for our Subcommittee.

Mr. STUDDS. The gentleman from California.

## STATEMENT OF HON. DAN HAMBURG, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HAMBURG. Yes. Good afternoon, Mr. Chairman, and colleagues. I am very glad to be able to attend this hearing. Even though it is dealing with Atlantic Fisheries issues, I think there are a lot of things to be learned here about the Pacific fishery that is my first concern.

A fish knows no jurisdiction. It migrates where it must, driven by its primal biological needs. And as humans, we have tried to impose our own structure on these creatures and have found that it has not worked in promoting their long-term survival or their sustainability. And while this hearing today is focusing on interjurisdictional concerns in the Atlantic, it is, at the same time, addressing the broader question of how to most constructively manage and steward all our fisheries throughout the coastal United States.

Forty-five percent of our living marine resources of known status are classed by the National Marine Fisheries Service as overutilized. This is a convincing indicator that we must be totally committed to developing a comprehensive and uniform system that will promote the effective long-term management of our resources.

I look forward to hearing the testimony today from these distinguished witnesses so that I can better understand this aspect of fisheries regulation. Thank you, Mr. Chairman.

[Statement of Mr. Lancaster follows:]

## STATEMENT OF HON. H. MARTIN LANCASTER, A U.S. REPRESENTATIVE FROM NORTH CAROLINA

Good afternoon, the Fisheries Management Subcommittee meets today to hear testimony on East Coast interjurisdictional fishery management. In the context of this hearing, interjurisdictional fisheries management involves the regulation of fishing activities that occur in both Federal and State waters or within the waters of several States.

Fishing in Federal waters is subject to Federal law, specifically the Magnuson Fishery Conservation and Management Act. Under the Magnuson Act, eight regional fishery management councils develop plans and regulations to regulate and conserve threatened fish species.

On the other hand, fishing within State waters, that is, waters within three miles of the coast, is managed by State governments. While a State can impose any appropriate regulation on fishing activity in its State waters, the States recognized that the regulation of close coastal fisheries required coordinated action among the States. To facilitate this management task, all the States bordering the Atlantic Coast established an interstate marine fishery management commission.

Earlier this week, Chairman Studds joined with Subcommittee Chairman, Tom Manton, to introduce H.R. 2134. Under this legislation, the coastal States, working through the Commission, would continue to develop multi-State fishery management plans covering State waters. However, H.R. 2134 would profoundly change the process after adoption of a plan.

Under the current system, a State that did not support a plan, or for that matter a State that supported a plan, is not required to take any action to implement that plan. However, under H.R. 2134, once the States voted in the Commission to impose a plan, each State would be required to take appropriate steps to implement that plan. If a State failed to act within the time frame established by the plan, the Commission would report that failure to the Secretary of Commerce. The Secretary could then impose on that State a moratorium on fishing for the species covered by the plan.

The goal of this legislation is to assure that States take coordinated action to protect threatened fish species. While I have some concerns about this bill, I welcome this opportunity to hear more about this important matter.

### [Statement of Mr. Hughes follows:]

STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. Chairman, thank you for holding today's hearing on interjurisdictional fisheries management on the Atlantic Coast. This issue is of great importance in Southern New Jersey and I commend you for your initiative.

Commercial and recreational fishing provide an important economic resource for New Jersey. The Atlantic Ocean and Delaware Bay have provided livelihoods for New Jersey residents for hundreds of years. However, in recent years, there have been declining fish stocks and concomitant economic depression. It has been necessary to place severe restrictions on catches and fishing moratoria on many species.

The state of the weakfish, striped bass, and summer flounder fisheries provide excellent examples of the problems being encountered by our fisheries resources. These species have declined to seriously low levels and current conservation measures are causing severe economic restrictions on local fishermen, commercial and recreational alike.

Recently, I have been contacted by many constituents concerned about the fluke management plan. Specifically, their concerns focus on the 6-fish bag limit for recreational fishermen and criticism that all States are not implementing similar conservation measures. I would appreciate the panel addressing these concerns.

Management of these fisheries is primarily within the jurisdiction of the Atlantic States Marine Fisheries Commission, a compact of 15 Atlantic States. Such a cooperative interstate approach to the management of highly migratory species is essential. Indeed, management of a fishery by one State will have little impact unless similar measures are adopted all along the migratory range of the species. Furthermore, the burden of conservation measures must be borne by all States involved in a fishery, not by a select few.

Accordingly, I am pleased to be an original co-sponsor of the Atlantic Coastal Fisheries Cooperative Management Act, legislation which seeks to bring equity to coastal fisheries management.

This Act requires the adoption of the necessary regulatory measures by Atlantic States to fully implement a fishery management plan to allow a fishery population to recover. In the event that a State does not implement a fishery management plan, the Act gives the Secretary of Commerce the authority to impose a moratorium on that State's fishery until it comes into compliance.

This Act is a necessary measure if we are to save several coastal fisheries from collapse. Just as the Striped Bass Act has led to the successful rebuilding of Atlantic striped bass stocks, this legislation will help rebuild other impoverished stocks in a fair and equitable manner.

I strongly support an interjurisdictional approach to the management of highly migratory species and intend to work with my colleagues to see this legislation become law this Congress.

Mr. Chairman, thank you again for holding this hearing. I would like to welcome today's witnesses, and I look forward to their testimony.

Mr. STUDDS. I thank the gentleman. I know I speak on behalf of the weakfish and the fluke and the other Atlantic fishes in expressing their particular appreciation to the concern of the West Coast.

Mr. HAMBURG. Thanks, Mr. Chairman.

Mr. STUDDS. We will go to panel one. There are three folks on this panel. I trust you have been advised of our barbaric procedures here. There is that little set of lights in front of you. You are being asked to confine your oral testimony to no more than five minutes. Your written testimony will appear in full in the record, and historians will never know whether you completed it or not. The yellow light will go on when you have one minute remaining, and when the red light goes on you have completed your statement. We apologize, but it is the only way we have discovered over the years to allow everybody to speak and then to get to questions.

We will begin with Dr. Michael Tillman of the National Marine Fisheries Service. Dr. Tillman, I regret the title you apparently have—Acting Deputy Assistant Administrator for Fisheries. Well, I guess it could be worse although it is hard to imagine. Welcome.

**STATEMENT OF DR. MICHAEL TILLMAN, ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Dr. TILLMAN. Thank you, sir. I have commented to others about the length of that title. It might be better just to say I am the Acting Deputy Director of the National Marine Fisheries Service. We are within the Department of Commerce, however, and I do appreciate the opportunity to appear before this Subcommittee this afternoon to present the Department's views on management of interjurisdictional fisheries.

Under the Committee's bill, the Atlantic States Marine Fisheries Commission would monitor the implementation and enforcement of the provisions of the Commission's Interstate fisheries management plans by each of the coastal States. States not implementing measures consistent with the provisions of a plan or not adequately enforcing such measures would be reported by the Commission to the Secretary of Commerce and the Secretary of the Interior as being out of compliance with a plan. If the Secretary of Commerce, in consultation with the Secretary of the Interior, agrees that a State is out of compliance with a plan, the Secretary would declare a moratorium on fishing for the species covered by the plan in the coastal waters of that State. The moratorium would be lifted upon notice from the Commission that the State had taken appropriate remedial action.

Other provisions of the bill include Federal support for State coastal fisheries programs, implementation of regulations in the EEZ by the Secretary in the absence of a fishery management plan under the Magnuson Act, and financial assistance by the Secretaries to the Commission and to the States to carry out the provisions of the bill.

Mr. Chairman, the Department of Commerce strongly supports the basic concept of the Committee's bill to use the Commission as the centerpiece of a renewed and strengthened effort to conserve and manage the coastal migratory fishery resources along the Atlantic seaboard. This approach builds upon successful efforts under the Atlantic Striped Bass Conservation Act. This landmark Act has been largely responsible for the ongoing recovery of that species. The Department has consistently supported reauthorization of the Striped Bass Act each time it was considered for reauthorization. We anticipate that passage of the bill would promote the recovery of several other distressed Atlantic Coast stocks including weakfish and summer flounder, similar to the recovery being witnessed for striped bass.

Several species on the Atlantic Coast are badly in need of improved management. Indeed, the Commission has already prepared a list of species which it believes are in need of interstate cooperative management by member States. Many of these species are extremely important to the commercial and recreational fisheries of the Atlantic Coast, especially the summer flounder, the bluefish, and the American lobster.

Three Regional Fishery Management Councils on the Atlantic Coast are attempting to manage several of these resources under fishery management plans prepared under the authority of the Magnuson Act. However, the nature of these resources and the more coastal location of these fisheries preclude any consideration by the Secretary of applying the provisions of Section 306[b] of the Magnuson Act to overcome adverse State action or inaction.

In other words, fisheries for these species take place predominantly in State waters, and, thus, the Secretary is unable to invoke the preemption procedures of Section 306[b]. Therefore, we believe it is imperative that an alternative legislative mechanism be provided to deal with situations in which one or more States are able to stymie a cooperative interstate management strategy supported by the majority of the cooperating States.

In particular, the populations of weakfish and summer flounder have experienced very high levels of fishing mortality in recent years. Since immediate reduction of exploitation rates can only be accomplished through regulatory action by the States, passage of a mechanism similar to the proposed bill would provide significant legislative support and incentive for these States to implement appropriate management measures for these species.

While we strongly support a strengthened coastal fishery management program that builds upon the established expertise of the Commission and its members, we believe some changes to the bill are necessary to ensure its constitutionality and to further improve its effectiveness. In this regard, we expect to provide the Subcommittee with our detailed comments shortly. Also, we are reviewing and may present to the Subcommittee for its consideration a few suggestions that we believe would improve the implementation and enforcement of the bill's provisions.

Concluding, Mr. Chairman, the Department finds the circumstances currently surrounding the management of migratory interstate fisheries along the Atlantic Coast roughly parallel to the circumstances surrounding the management of migratory waterfowl

earlier in the century. These, of course, led to the enactment of the Migratory Bird Treaty Act.

No single State acting on its own and out-of-synchrony with other involved States can hope to manage coastal migratory fishes and fisheries effectively. On the other hand, adverse action or inaction by any single State can effectively stymie the cooperative efforts of many States with one another to manage such resources effectively. The provisions of the bill, if enacted, would go a long way toward resolving these potentially disastrous consequences.

Thank you, Mr. Chairman, for this opportunity to express the views of the Department. I am available for answering questions if you have any.

[The prepared statement of Mr. Tillman can be found at the end of the hearing.]

Mr. STUDDS. Thank you, sir. As I recall seven years ago, your attorneys were raising constitutional questions about the striped bass bill. I assume the same lawyers that are still there?

Dr. TILLMAN. That is correct.

Mr. STUDDS. Fortunately, the striped bass is also still there while they are debating amongst themselves. I assume that—

Dr. TILLMAN. Nonetheless, we still see this as—well, the proposed bill is the way that we must proceed.

Mr. STUDDS. That is abundantly clear and genuinely frightening, but if your attorneys have nothing better to do than argue about the constitutionality of an interjurisdictional fisheries bill, it may well be that the Russians gave up prematurely. I don't know. Forgive us—all that commotion. There is a vote on the floor. I am going to go at least to Don Barry before we break. Don, it says here you are the Counselor to the Assistant Secretary for Fish and Wildlife and Parks. I assume that is the Assistant Secretary-designate?

Mr. BARRY. That is correct.

Mr. STUDDS. Yes. Welcome, it is nice to see you again.

**STATEMENT OF DONALD BARRY, COUNSELOR TO THE ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY GARY EDWARDS, ASSISTANT DIRECTOR FOR FISHERIES**

Mr. BARRY. Good afternoon. My name is Don Barry, and I am the counselor to the Assistant Secretary of the Interior for Fish and Wildlife and Parks. It is indeed a pleasure to return to my old Committee. I look forward to working with you on this and other issues. I am testifying today on behalf of Secretary Babbitt. Since I am just the typical pretty political face brought in to testify at a Congressional hearing, I would like to introduce Gary Edwards who is the Fish and Wildlife Service's Assistant Director for Fisheries who is with us today.

Mr. Chairman, the Department of the Interior strongly supports the intent of the draft Atlantic Coastal Fisheries Cooperative Management Act of 1993. We are currently reviewing the draft bill within the Administration and will provide you with our suggested amendments to the bill as soon as possible.

Numerous Atlantic Coast fish populations, including weakfish and summer flounder, are on the decline or at historic low levels of

abundance due to habitat loss and alteration, pollution, and overfishing. The bill under consideration will facilitate the conservation, restoration, and cooperative management of these and other valuable interjurisdictional fishery resources along the Atlantic Coast.

We believe that several fundamental principles form the basis for successful conservation and management of coastal interjurisdictional fisheries. First, fishery management plans must be based on good scientific information. Second, there must be adequate measures to prevent overfishing and to reduce the degradation and loss of important fisheries habitat. Third, State and Federal management agencies must work cooperatively to achieve management plan objectives, and management entities must be held accountable for full implementation of management plans.

We believe that fishery restoration actions should be undertaken as a part of a broader ecosystem-based approach and should focus on: identifying important habitats, such as those used for spawning, overwintering, growth or residency; monitoring the status of habitat; and making recommendations to protect and restore habitat.

To address habitat issues, the Commission should establish a process for reviewing potential actions that will impact important fisheries habitat. Once these mechanisms are established, the Commission will be able to effectively comment to those agencies that regulate actions affecting habitat areas. Furthermore, those agencies should give serious consideration to incorporating the recommendations provided by the Commission into their planned activities.

To ensure that all States fully implement Commission-adopted interstate fishery management plans, mechanisms for accountability must be in place. While Atlantic fishery coastal States participate in the development of plans, they are not required to implement and enforce management measures identified in adopted plans. The resulting inconsistent management strategies have contributed to the continued decline of Atlantic coastal fisheries. Of the 17 plans that have been adopted by the Commission, only three have been fully implemented.

This lack of enforceability and accountability of management actions must be reversed. Failure to embrace the identified management measures clearly increases the risk of further depleting valuable fishery resources. In addition, failure by one or more management jurisdictions to comply with recommended management measures decreases the ability of other jurisdictions to successfully implement their management plans.

The Department of the Interior supports an approach to management of Atlantic coastal fisheries that embraces these above principles. Much can be learned from the success of the Atlantic Striped Bass Conservation Act. The Striped Bass Act promotes conservation and cooperative management, ensures accountability by requiring the States to implement and enforce the Atlantic States Marine Fisheries Commission's plan, and through the moratorium clause provides a strong incentive for the States to implement and enforce management measures of the plan. As a result, Atlantic

coastal migratory striped bass populations are no longer considered to be on the decline.

It should be noted that our views on the conservation of interjurisdictional coastal fisheries are based on years of experience in the field. The Department, through the Fish and Wildlife Service, presently provides both technical and financial assistance to the Atlantic Coast States and the Commission to support management of interjurisdictional coastal fishery resources. For example, through administration of the Sports Fish Restoration Account, the Service provides Wallop-Breaux funds to the States and the Commission in support of their efforts.

The Fish and Wildlife Service is also directly involved with estuarine resource issues through a myriad of programs and activities. Approximately 50 percent of the Service's fisheries activities are related to coastal fisheries and their habitats. The Service has expertise in population modeling and stock assessment, fishery restoration, habitat conservation and restoration, fish propagation, and technology development.

Approximately two-thirds of all Section 404 permits reviewed by the Service pertain to coastal resource and habitat issues. Approximately 40 percent of the Service's national wildlife refuges are coastal, including about 60 refuges along the Atlantic Coast that total approximately 800,000 acres. The focus of the Service's Bay and Estuary Program is to develop and implement ecosystem-based policies and programs that protect and enhance coastal living resources.

Moreover, our Atlantic Coastal Regional Offices actively participate in implementation of Commission plans covering anadromous fish (Atlantic sturgeon, striped bass, and American shad) and have been involved in the restoration of American shad and river herring populations. The Service also participates in the Chesapeake Bay Striped Bass Restoration Program through production of hatchery fish, coordination of a coast-wide tagging program, and extensive study and assessment of the Albemarle Sound and Roanoke River striped bass stock. As I mentioned earlier, the ongoing restoration of Atlantic Coast striped bass exemplifies the cooperative efforts required to successfully manage interjurisdictional fishery resources.

Mr. Chairman, this concludes my testimony. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

[The prepared statement of Mr. Barry can be found at the end of the hearing.]

Mr. STUDDS. You have that part right. Thank you very much, Don. I apologize to you and to Bill Coates. We have five minutes in which to vote, and it is going to be about a 20-minute procedure over there, maybe, if we are lucky. One should never do this particularly when the next witness is a constituent. This is very bad form; I am very embarrassed. I will do my best to make it up to you. Not only that, the next face you see here may either be that of my own or that of the gentleman from North Carolina. We will promise you one or the other. Maybe the gentleman from California; you never know. But in any event, we shall return as quickly

as the proceedings on the floor allow us to. The Subcommittee will stand in recess.

[Recess.]

Mr. LANCASTER. [presiding] The Subcommittee will be in order. We will resume the hearing which was begun by the Chairman, Mr. Studds. We regret that the session on the floor today has made things sort of discombobulated, and we probably will have additional interruptions before we finish, but we will begin again, and I believe that two of the members of the first panel have given their testimony. I will now call on Phil Coates, the Chairman of the Atlantic States Marine Fisheries Commission, for his testimony. You may, if you choose, Mr. Coates, enter your formal testimony in the record and summarize, in the interest of time, if you would please.

#### STATEMENT OF PHILIP COATES, CHAIRMAN, ATLANTIC STATES MARINE FISHERIES COMMISSION

Mr. COATES. I will be glad to do that, Mr. Chairman. I do have a supplemental statement though. If I could be allowed to read that, I would be most appreciative.

Mr. LANCASTER. You may indeed.

Mr. COATES. Mr. Chairman and members of the Committee, I am Phil Coates, Director of the Division of Marine Fisheries for the Commonwealth of Massachusetts. I am also Chairman of the Atlantic States Marine Fisheries Commission, and it is in this capacity that I appear before you today.

We have already submitted our written testimony on the substantive portions of the bill, House 2134, so I just wanted to add a couple of additional points as a result of some of the dynamics of our most recent ASMFC meeting which just concluded at noon today.

For the past three days, the Commission has been meeting at its spring meeting here in Washington. This morning, the Commission's Executive Committee took a significant step when it adopted specific language to recommend to be included in the new Federal legislation. The vote was overwhelmingly in favor of this action by a margin of 13 to 1 to 1. Until today, our position was one of general support. We now have specific language that the Commission believes will get the job done. Your staff is generally aware of the language that the Commission has recommended and this language has been used as the basis of much of the drafting that went into House 2134 that is before the Committee today.

The States are aware that they have a serious responsibility to conserve and manage coastal fisheries for the benefit of all people. The Commission has recognized that the essential partnership necessary for effective conservation of our shared fishery resources requires a Federal role in helping to ensure that this system works. The Commission's draft does this while maintaining the States as the primary fishery managers for coastal resources. I am pleased to be able to tell the Committee of ASMFC's action this morning and hope that this will give even further impetus to the enactment of this important legislation.

Mr. Chairman, there are some significant areas where the Commission's position differs from House 2134. Those are summarized

in my earlier written testimony. There is one other issue that we feel is important at this point that we would like to identify to the Committee and that is the issue of funding. The question of adequate funding to carry out effective programs for coastal fisheries is a very critical issue.

There is no question that today the States simply do not have the resources required to get this job done. Effective conservation and management of coastal fisheries will require greater efforts by the States in statistics, monitoring, law enforcement and fishery management planning. Other programs such as habitat and research will also be affected.

No legislation, State or Federal, will fix the problems with coastal fisheries conservation unless adequate resources are made available to State agencies. We cannot give you a specific figure today, Mr. Chairman. We are working on an estimate of what it would cost for the States to carry out their portion of this partnership. It will require Federal examination and assistance, however.

This legislation, both the bill recommended by the Commission and H.R. 2134, were modeled after foresighted legislation that bears the stamp of the distinguished Chairman of the full Committee—the Atlantic Striped Bass Conservation Act. Striped bass are experiencing a recovery because of the hard work of the Commission, the dedication of the States, and the partnership between Federal and State agencies backed up by the commitment of the Congress evidenced by the Atlantic Striped Bass Conservation Act. The Commission believes that the same process that has worked for striped bass can work for other species as well.

The Commission is proud to be able to recommend to the Committee the specific language approved by our Executive Committee this morning. We believe that House 2134 will be strengthened if it followed the provisions of the ASMFC draft in those areas where they differ. We look forward to continuing to work with the Committee and its staff as this legislation moves through Congress.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

[The prepared statement of Mr. Coates can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, Mr. Coates. Mr. Coates has just indicated that he does not have an estimate of what this legislation will cost the States. I wonder if either of the other witnesses have such an estimate, and is there any Federal assistance currently available to help the States with this new Federal mandate?

Dr. TILLMAN. No, sir, we don't have any estimates of what it would take. We do note that National Marine Fisheries Service would require new funds in order to undertake these responsibilities. We also would note that the Commission and the States would require assistance as well. We do note that one of the purposes of the proposed bill is to provide financial assistance to facilitate its goals. It would take that to enable all of us to undertake this work.

Mr. LANCASTER. Mr. Barry.

Mr. BARRY. I don't believe the Interior Department has an exact estimate either at this point. In terms of where the funding would come from, currently this type of work is funded through pass-

through money from the Wallop-Breaux Fund. Unless additional money was forthcoming from Congress, funding for this initiative would probably continue to come from sources like Wallop-Breaux.

Mr. LANCASTER. For the record, if either of the witnesses can come up with an estimate of what this might cost the States, we would appreciate your providing that estimate for the Committee. H.R. 2134 makes it illegal to possess within a State under a moratorium fish caught in violation of the moratorium. What impact will this have on fishermen who have lawfully caught fish?

As an example, assume that North Carolina is placed under a moratorium. Would North Carolina retailers be deterred from purchasing legally caught fish out of fear of possible enforcement action? And, Mr. Coates, I will call on you first, but the others may wish to comment as well.

Mr. COATES. Thank you, Mr. Chairman. The Commission debated this issue at length yesterday, and it does raise some very significant problems. There is the obvious problem of law enforcement, a problem which has been addressed by some of the States. Even now when States have fishery closures in their waters or a harvesting prohibition, the question comes up about what States can do in terms of receiving fish from other areas, and we are working on that.

In Massachusetts there is legislation probably going to be filed or a regulation adopted that would allow this accommodation so that fish could be brought in legally caught from other venues. I don't see much of a distinction between a moratorium-type situation unless it was the desire of the people enforcing the moratorium to really come down hard on the particular State. But I don't think it is really the intention to thwart commerce completely, and I am sure that provisions could be made to accommodate it with the appropriate accountability, either a paper trail or something of that nature.

Mr. LANCASTER. Dr. Tillman, aren't we giving the Commission unprecedented power here by allowing them to determine whether or not a State has taken adequate action to enforce the moratorium, and are there other situations where Commissions are to report to the Federal Government on the actions of member States?

Dr. TILLMAN. I am unaware of a precedent for that in general for a broad-reaching bill such as this one. We do have the example of the Striped Bass Act—a specific example—but the idea of giving the Commission this responsibility is, in my view, to provide a filter between the States and the Federal Government. The Federal Government only comes into play when the Commission calls upon us to get involved. That in a way preserves the States' prerogatives which they give over to the Commission in order to undertake this work. So it is between the States and the Commissions, in our view, and we only get involved when there is a definite problem in the view of the Commission, and then we are called in.

Mr. LANCASTER. Are the powers here identical to those in the striped bass legislation, or are they broader?

Dr. TILLMAN. My understanding is that they are virtually the same, but the Striped Bass Act was the model on which the proposed legislation has been developed.

Mr. LANCASTER. The Commission resolution, Mr. Coates, in support of Federal action suggested incentives to encourage compliance, but this bill contains no such incentives, only penalties. I wonder if you could comment further on the need for incentives and what those incentives might be as opposed to only sanctions?

Mr. COATES. That is true. The moratorium, of course, looms as the most formidable obstacle with any State's desire to fish out of compliance, and as an incentive, of course, we have bandied about at the Commission level the idea of financial incentives, somewhat to the financial incentives I believe that were developed for the Interjurisdictional Fisheries Act which allowed States to recover up to 95 percent reimbursements for activities consistent with the actions of that legislation.

So it would seem to me that financial incentives would be something that would be very appropriate consistent with our earlier comments about the need for encouraging funding. So if a State was in compliance, they would get perhaps more funding for the actions necessary to carry out the provisions of the Act.

Mr. LANCASTER. I wish that for the record we could be supplied with a list of States covered by various Commission plans that are not in compliance with the various plans now in effect. If you would please provide that for us.

Mr. COATES. We would be glad to provide you with that list. The list ranges—I think it was either Dr. Tillman or the other speaker that indicated that 17 of the plans or 15 of 17 of the plans are not in total compliance, and that ranges from very minor instances. I think in the case of Massachusetts, we never implemented a menhaden plan because we no longer have a significant menhaden fishery. And, you know, that kind of thing is just a matter of regulatory cleanup from my perspective—two of the more specific cases of noncompliance where we do have problems, and we will be glad to provide you with that list, Mr. Chairman.

[The supplemental material supplied by Mr. Coates appears at the end of the hearing.]

Mr. LANCASTER. OK, do either of the counsel have additional questions for this panel? OK, the counsel will submit additional questions for the record. Thank you for your testimony. We will now call the second panel for their testimony. We will call forward Mark Reeff who is with the International Association of Fish and Wildlife Agencies; Mr. Gordon Colvin of the New York Division of Marine Resources; Andy Loftus, Research Specialist for the Sport Fishing Institute; Jerry Schill, Executive Director of the North Carolina Fisheries Association; and Bill Goldsborough, Fisheries Expert with the Chesapeake Bay Foundation.

Again, in the interest of time, I would encourage each of the witnesses to submit their testimony for the record in full but summarize that testimony in the oral presentation. Without objection, each of your full statements will be admitted into the record immediately following your oral presentation. Mr. Reeff, you may begin.

STATEMENT OF MARK REEFF, RESEARCH SPECIALIST, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. REEFF. Thank you, Mr. Chairman. I am Resource Director at the International Association of Fish and Wildlife Agencies, and we represent State fish and wildlife agencies across the country most of which are marine fisheries agencies who have the responsibility for the management of these fisheries.

We are pleased to discuss the bill before the Subcommittee to provide for the enhanced management of Atlantic coastal interjurisdictional fishery resources. This certainly is an area of great importance to State fishery management agencies as States have primary management authority, as you know, over fishery resources in State territorial waters.

The underlying basis for this bill is the decline and overfishing of Atlantic coastal fish stocks. Interstate management plans exist or could be drafted for these fisheries, but effective implementation of fishery management plans requires all States to enforce regulations and take management plans consistent with the management actions. If one or more States do not comply with the provisions of a plan, the effectiveness of interstate management of the fishery can be defeated. Many of these stocks are so fragile it is imperative that something be done.

The bill would provide for Federal enforcement of provisions for interstate fishery management as determined by the Atlantic coastal States acting through the Atlantic States Marine Fisheries Commission. The recognition of the need for Federal intervention illustrates the gravity with which the States see this problem. State managers under normal circumstances view such intervention with great concern. The States' recognition of the need for this approach, however, emphasizes the seriousness and the need for the situation regarding these fishery stocks.

The International Association supports the approach embodied in the bill for Atlantic coastal State interjurisdictional fisheries. This support recognizes the role of the Atlantic Coast States in developing the draft language of the bill and the support of the Atlantic States Marine Fisheries Commission. We refer the Subcommittee to ASMFC's testimony for discussion of some of the minor changes which we support.

However, while we support the general provisions of the current bill, similar situations do not necessarily exist on the other coasts. We would not support a similar approach to address the management of fishery resources along the Gulf and Pacific Coasts. We make this distinction because of the significant differences along the three coasts between the biological characteristics of fish stocks and between the existing mechanisms for cooperative management among the States.

We urge the Subcommittee to resist the temptation to apply such an approach to the Gulf and Pacific Coasts. Other innovative cooperative fishery programs will be needed in those areas, and we would be very pleased to work with the Subcommittee on the specific concerns of those areas.

Thank you, Mr. Chairman—happy to provide comments.

[The prepared statement of Mr. Reeff can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, Mr. Reeff. Mr. Colvin.

# STATEMENT OF GORDON COLVIN, DIRECTOR, DIVISION OF MARINE RESOURCES, STATE OF NEW YORK

Mr. COLVIN. Thank you, Mr. Chairman, and good afternoon. On behalf of Commissioner Tom Jorling, I would like to thank the Subcommittee for inviting the New York State Department of Environmental Conservation to testify on the vital subject of managing the migratory marine and anadromous fisheries of the Atlantic Coast.

In 1990, Governor Cuomo appointed a task force of citizens, scientists, and agency representatives to assess the status and needs of New York's coastal resources and management programs. Among the many issues addressed by the governor's task force on coastal resources was the management of marine fishery resources. One recommendation of the final report issued in November of 1991 was that New York State urge Congress to adopt Federal legislation that penalizes States for noncompliance with management plans adopted by the Atlantic States Marine Fisheries Commission. In doing so, the task force did note the successful program pursuant to the Atlantic Striped Bass Conservation Act as has been testified to here by a number of witnesses already.

The task force's recommendation recognizes that restrictive management measures to control fishing mortality need to be implemented in virtually all inshore interjurisdictional fisheries of the East Coast. However, while States and their scientific advisors may agree readily on how and how much to reduce exploitation, individual States frequently find it difficult to pass legislation or adopt regulations when confronted with strong opposition.

If key States fail to implement needed regulation, an entire coastwide management strategy may fail, and an important fishery could collapse. Moreover, when some States adopt restrictive regulations but their neighbors do not, strong pressures emerge for States to backslide into noncompliance.

Legislation which authorizes the Federal Government to intervene only when an individual State has been unable to implement measures agreed to by the States jointly through the Atlantic States Marine Fisheries Commission preserves an appropriate balance between State and Federal interests in regulation of migratory fisheries in State waters. This approach has effectively resolved the noncompliance problems for striped bass and needs to be extended to all East Coast interjurisdictional species.

With respect to the draft legislation and the specific issues on which you have requested comments, we offer the following: With respect to the roles of the Secretaries of Interior and Commerce, New York recognizes and appreciates the strong involvement of both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in ASMFC's Interstate Fishery Management Program. We support establishing a role for each Secretary in implementation of sanctions under the proposed legislation. The consultation process established in the proposed legislation is one way of establishing such roles.

With respect to timeframes for plan implementation, New York strongly supports prompt implementation of all existing management plans but recognizes that some States may need more than one year to do so, particularly when State legislation needs to be enacted. We recommend that a maximum period of 18 months be allowed following adoption of an implementation schedule by the Commission.

Mr. Chairman, thank you for the opportunity to testify. We look forward to responding to questions and answering any further questions the Committee may have following today's hearing.

[The prepared statement of Mr. Colvin can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, Mr. Colvin. Mr. Loftus.

#### STATEMENT OF ANDREW LOFTUS, RESEARCH SPECIALIST, SPORT FISHING INSTITUTE

Mr. LOFTUS. Thank you, Mr. Chairman, and the other members of the Subcommittee for providing this opportunity to express the views of the Sport Fishing Institute on H.R. 2134 and on the general concept of interjurisdictional fisheries management.

The Sport Fishing Institute is a nonprofit fisheries conservation and education organization representing the interests of the sport fishing industry and the tens of millions of Americans who rely on recreational fishing as a leisure activity. Proper management of fish stocks which provide for long-term stability and yield is paramount to providing robust recreational fisheries and to fostering a stable economic climate in which the recreational fisheries businesses can develop and sustain their business. The draft legislation that we have reviewed, with strengthening amendments, will provide for improved management and, as such, is supported by the Sport Fishing Institute.

Due in part to inconsistencies in management goals between government agencies, the current status of Atlantic fisheries is deplorable. Quick passage of this legislation will provide quick relief to devastated fisheries. Although the Atlantic States Marine Fisheries Commission was formed more than 50 years ago to improve management of migratory species and has adopted 17 fishery management plans covering somewhere around 20 species, only three of these plans have been fully implemented by the States. One of these, the Striped Bass Plan, was implemented only through the conservation leadership that was provided by this Committee and by the United States Congress.

The Sport Fishing Institute supports the State management of fisheries which occur within the jurisdictional waters of the States. However, discrete stocks of migratory fish must be managed as a unit throughout their range and life cycle, and management plans must be based on total mortality rates rather than simply landing statistics. It is, therefore, imperative that all management authorities develop and adhere to measures outlined in coordinated plans.

As is the case with weakfish restoration, reluctance of even a single jurisdiction to abide by common management strategies could cause programs to fail across the entire range of the affected fish stock. Therefore, a mechanism which provides the States with

enforceability must be implemented. Such a mechanism is successfully embodied in the Atlantic Striped Bass Conservation Act which provides for a Federal role and conservation in those States which are unwilling to enact the necessary conservation measures. The draft legislation provides a similar Federal role and should prove to work as well for other fisheries.

Another provision of the Striped Bass Act which has contributed to the successful management of coastal stocks has been the equal involvement of both the Secretary of the Interior and the Secretary of Commerce. The cooperative relationship between these two agencies has brought the expertise and resources of two major Federal agencies to bear on a single issue. The Department of Commerce provides extensive expertise in marine fisheries and provides some coordination between Federal and State fishery management plans. Meanwhile, the Department of Interior enhances management through their responsibilities for anadromous fisheries, habitat, and the wetlands programs, and administers more funding to the States for marine fisheries management programs, through the Sport Fish Restoration Act, than any other Federal agency. Failure to include the Secretary of Interior in an equal role will greatly compromise the potential success of this legislation.

Two species which are extremely important to the recreational fishing industry, weakfish and summer flounder, are so devastated that the Sport Fishing Institute is concerned that implementation of management measures cannot be delayed any further. These species have been described as being in even worse shape than striped bass were at their lowest point. The spawning biomass of these stocks are at less than five percent of this historical levels.

The original Weakfish Management Plan written almost eight years ago and its subsequent amendments adopted in 1991 have not been fully implemented by the States and have, therefore, not protected the stocks from further decline. Implementation of management measures incorporated in these plans must be immediate.

Properly instituted management programs can be costly. Although no specific funding is included in this legislation, carrying out the provisions of this Act will require joint Federal and State funding initiatives. The most equitable manner in which to distribute the cost of interjurisdictional programs should be based on a quantitative estimate such as landings, value, or participation in the fishery within each State's waters or within the EEZ.

One means of funding natural resources programs which has proven to be successful and accepted in the past has been implementation of license and extraction fees. A growing number of coastal States have implemented salt water licenses or special marine specie stamps which recreational anglers support the cost of fisheries management programs.

For a license system to be successful, it must be equitable with fees imposed on other users of the resource. Therefore, the commercial fishing sector must also contribute to the management of fisheries which they impact to implementation of an extraction fee similar to those levied on the commercial users of other common property resources such as timber, minerals, and grazing fees.

With increasing pressure from all citizens to enjoy these common property resources, the days of unlimited, free access to our fisher-

ies have long passed. We need to concentrate on modernizing our outdated approach to managing and funding our fisheries programs and reflect these changes to better manage the limited resources in the future.

In conclusion, the Sport Fishing Institute supports the concepts embodied within this draft legislation. We strongly endorse the provisions which provide for a Federal moratorium in the case of noncompliance with ASMFC management plans and those provisions which require full compliance with the Weakfish Management Plan within six months. We urge the addition of the provisions which require all States to implement the Summer Flounder Management Plan within six months and to grant the Secretary of the Interior a role equal to the Secretary of Commerce.

This draft legislation contains the minimum conservation requirements necessary to improve the management of these fisheries, and we urge this Committee to strengthen the legislation with our recommendations. Thank you and I will be free for any questions.

[The prepared statement of Mr. Loftus can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, Mr. Loftus. Mr. Schill.

#### STATEMENT OF JERRY SCHILL, EXECUTIVE DIRECTOR, NORTH CAROLINA FISHERIES ASSOCIATION, INC.

Mr. SCHILL. Thank you, Mr. Chairman. It is indeed a pleasure to be here this morning. We appreciate the opportunity. I am Jerry Schill, the Executive Director of the North Carolina Fisheries Association, also a member of the South Atlantic Fishery Management Council. My comments this afternoon are strictly in accordance with my position of NCFA.

The gist of an interjurisdictional bill is that all efforts to foster cooperation among the States have failed. We vehemently disagree. It might be said that all efforts have been exhausted to foster cooperation among the various bureaucrats in their corresponding Federal and State agencies, but to extend that to include the so-called user groups is an absolute fallacy.

Our organization is 41 years old, and I have served in my present position for almost six years; on the South Atlantic for almost four. The Atlantic States Marine Fisheries Commission is 51 years old this year. Yet, until March of 1992, our group never received any type of communication except that which we requested in accordance with their operation.

In May of 1992, I attended the spring meeting of the ASMFC as a voting member by proxy. I was amazed at the lack of attention given to their "compact" which is a public law passed by the 77th Congress and amended by the 81st Congress. For example, Article VII States that the Atlantic States Marine Fisheries Commission shall establish an advisory Committee.

Mr. Chairman, until this morning, the Atlantic States Marine Fisheries Commission had no advisory Committee. Yet, the language in that public law passed by the Congress States that they shall establish it. My point, Mr. Chairman, is twofold. First, the ASMFC's compact is a public law passed by the United States Con-

gress. The language is written to assure that the interests of each State are part of the process. The text of at least two examples in my submitted testimony include the word "shall." However, for whatever reason, the ASMFC has ignored them for years.

Second, interjurisdictional legislation is based upon the premise that various States have not willingly participated in certain efforts to protect fisheries resources. Again, how can that assumption be made when the actual users, both commercial and recreational, have not been a part of this process? For years, the ASMFC has been a stealth organization totally out of touch with real fishermen especially from the perspective of North Carolina. They have had meetings at out-of-the-way or out-of-pocketbook locations that fishermen simply cannot attend.

Other language in the discussion draft cites the consultation with appropriate councils. In our case, that would mean the Mid-Atlantic or South Atlantic Council. The Mid-Atlantic Council, of course, has only three of nineteen voting members who represent commercial interests and the South Atlantic Council which has only two of thirteen. I realize that I am now referring to the Magnuson Act. However, because interjurisdictional fisheries management and Magnuson are the primary components of this bill, you cannot discuss one without the other.

Cooperation among the States is absolutely essential for interjurisdictional fisheries, but to reward the ASMFC because of their shortcomings is ludicrous at best. Yes, the dialog between the Atlantic States Commission and user groups has improved many times over since Jack Dunnigan has arrived as its Executive Director. But unless and until the ASMFC is abiding by its own compact which was passed by the United States Congress, this attempt at fostering cooperation will fail miserably.

In closing, Mr. Chairman, I ask you, how fair is it to demand that fishermen abide by the laws and regulations of the land when their very government thumbs their noses at those same laws? Knowing that the Magnuson Act calls for the Secretary to make council appointments to ensure a fair apportionment of the active participants but flagrantly violating the law when making those appointments, or the ASMFC knowing full well that it is violating its own compact that calls for active participation by all user groups, then uses its own failing in that regard to try to convince you that those same parties are not cooperating?

Mr. Chairman, my folks make their living on these resources, as you well know, as have their ancestors for generations. Their sole purpose in wanting fisheries management to work may be pragmatic, but it is workable if they are allowed to participate in the process. Let us not waste precious time and money building bureaucratic empires that will do nothing to help fisheries management. I appeal to you to force these agencies to abide by the laws that you've already passed so that the actual users can participate specifically through council representation and through a working advisory Committee of the ASMFC that has been given the opportunity to work.

After they fulfill congressional mandates, further interjurisdictional legislation should be considered, but I doubt very much that stronger measures will be needed if all groups are brought into the

process as was intended by the Congress in the first place. Thank you, Mr. Chairman.

[The prepared statement of Mr. Schill can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, Mr. Schill. Mr. Goldsborough.

### STATEMENT OF WILLIAM GOLDSBOROUGH, FISHERIES EXPERT, CHESAPEAKE BAY FOUNDATION

Mr. GOLDSBOROUGH. Mr. Chairman, members of the Subcommittee, my name is Bill Goldsborough. I am the Fisheries Program Chief with the Chesapeake Bay Foundation, a nonprofit conservation organization with 85,000 members throughout the Mid-Atlantic area. Thank you for the invitation to address the Subcommittee on what we consider to be the most important legislation this year affecting inshore stocks of migratory fish.

The mission of the Chesapeake Bay Foundation is to "Save the Bay." While this catchy phrase means many things to many people, to us the clearest indicator of success in this endeavor is the restoration of the Bay's living resources. In support of this goal, the Foundation has devoted substantial resources to the preservation of aquatic habitat, but it has become clear to us that all the efforts underway to restore habitat cannot maintain fish populations if they are not accompanied by efforts to conserve fish. Thus, we have become an advocate for effective fisheries management, and we have found that this takes us far beyond the boundaries of Chesapeake Bay.

Virtually all of the important fisheries in the Bay depend on fish stocks that are shared by other coastal States, in many cases, by a dozen or more. Not only the striped bass, whose migratory ways have been well appreciated by Congress, but also weakfish, summer flounder, American shad, red drum, river herring, and many more species move annually up and down the coast and support a variety of fisheries along the way.

Those of us in Chesapeake Bay cannot manage these fisheries. Neither can those whose interests lie in Narragansett Bay or Delaware Bay or Long Island or Pamlico Sounds. All Atlantic Coast jurisdictions share this problem. They must work together to manage and maintain these joint resources.

This need for cooperation was recognized 50 years ago when Congress created the Atlantic States Marine Fisheries Commission. While the Commission has become an important forum for the development of cooperative management plans, the States have a poor record in implementing these plans. The result has been a general decline in our coastal fishery resources.

And the best illustration of this phenomenon from the point of view of Chesapeake Bay is the American shad. While it once supported the most valuable commercial finfishery in the Bay and as well as a vibrant recreational fishery, the American shad is severely depleted in the Bay now and supports essentially no fishing. In Maryland waters, a total moratorium has been in place for 13 years with almost nothing to show for it. In contrast, after a five-year moratorium on striped bass, a similarly important finfishery is rapidly being rebuilt.

The key difference between these species lies in fisheries management. Both species are the subject of ASMFC management plans, but only the Striped Bass Plan was implemented by all coastal States. When Maryland closed its shad fisheries in 1980, new commercial fisheries were developing in the ocean to take their place. These fisheries, known as "intercept" fisheries because they capture shad on their way to their spawning rivers, are now found in most Atlantic coastal States' waters in spite of the fact that they are discouraged by the ASMFC Shad Plan. The net effect is that an individual State is helpless to restore its traditional in-shore fisheries.

In contrast, because of uniform compliance with its management plan, the striped bass is now well on its way to recovery and even under strict harvest limits is providing a much needed economic shot in the arm to our commercial and recreational fisheries. This success is a direct result of the Atlantic Striped Bass Conservation Act of 1984 which provided an incentive for States' compliance with the coastal management plans. This relatively simple approach has proven itself, and it is time to apply it to other species.

The legislation before you has evolved from the striped bass experience as well as from two years of deliberations on similar bills and countless discussions among interested parties. This bill, the Atlantic Coastal Fisheries Cooperative Management Act of 1993, is well developed and may only need minimal refinement. It has our full support in concept, and we urge swift passage.

As you deliberate specific parts of the bill, please consider the following three points which are priorities from our point of view: First, the timeframe for implementation by the States of the ASMFC plans should be as short as practicable. We support the one-year interval in the current version. Second, added urgency for implementation should be placed on summer flounder as well as weakfish. Third, the Secretarial review for noncompliance should be done jointly by the Secretaries of Commerce and Interior.

This concludes my remarks. Thank you for the opportunity to comment on this very important legislation.

[The prepared statement of Mr. Goldsborough can be found at the end of the hearing.]

Mr. LANCASTER. Thank you, gentlemen, for your fine testimony. We have under consideration in the Committee now reauthorization of the Magnuson Act. I wonder if anyone can tell us why we should handle these problems separately from that reauthorization? Why not simply address this problem as a part of reauthorization of Magnuson?

Mr. REEFF. Mr. Chairman, we would like to believe that the Commissions, having their hands on the fishery management plans at hand, are probably in the best shape. And the best position to be able to implement those plans is where the councils have larger and longer processes so we would feel that it is closer to the actual management of the fish species. That is one of the reasons we feel that they have to be separately handled.

Mr. LANCASTER. Does anyone else care to comment or do you—Mr. Goldsborough?

Mr. GOLDSBOROUGH. Mr. Chairman, I would simply say that we concur with the views of the States as we understand them and the

Atlantic States Marine Fisheries Commission, that the management of the inshore migratory stocks that are generally found within the three-mile limit are most appropriately and most effectively handled by the States. And we believe that the Atlantic States Marine Fisheries Commission, through their management planning process, is the most appropriate forum for State management.

Mr. LANCASTER. Mr. Schill, if you were able to overcome the constitutional problems of the Federal Government regulating fisheries within State waters, do you think that we would be better to allow the councils rather than the Commission to implement this legislation and regulate or protect these interjurisdictional fisheries?

Mr. SCHILL. No. No, Mr. Chairman, I don't. Councils' jurisdiction should remain where it is at—3 to 200 miles. Keep in mind, Mr. Chairman, that our criticism of this legislation is strictly based upon the fact that while we have to encourage our industry to abide by the laws, albeit grudgingly, no matter what the situation may be, when their own government is failing to abide by those laws, it makes it tough for me to do so. And certainly interjurisdictional fisheries management and the ASMFC should be a part of the process, but this particular legislation to be considered under the gist that all efforts have failed is an absolute fallacy, and that is where my comments are coming from.

Mr. LANCASTER. If this legislation were modified in such a way as to guarantee the participation of commercial fisheries interest in the Commission, would you then support the legislation?

Mr. SCHILL. No, sir. The particular ASMFC compact, I think, is more than adequate in fostering the cooperation of the States as far as interjurisdictional fisheries. If the compact is abided by by the Commission and an advisory committee is put together like they had commented this morning or voted on this morning, I believe that that cooperation will work. And the menhaden fishery is a perfect example of that. We have a plan in place, but, then again, you have very few parties involved there so that they were able to bring in the industry at the get-go. I think that is the key.

Mr. LANCASTER. So are you saying then that if the advisory committee were mandated and, in fact, were functioning that you would support this legislation?

Mr. SCHILL. Yes, sir.

Mr. LANCASTER. I asked the last panel the question of the problems of legal catches occurring in States where illegal catches have occurred and the moratorium is in place. I wonder if one or more of you might care to comment on that problem. How do we address the problem of those who attempt to and do successfully comply with the law whereas others in that same jurisdiction may not resulting in a moratorium being placed in effect? Mr. Loftus?

Mr. LOFTUS. Mr. Chairman, we addressed that in a working group that we had to help develop some of the draft legislation. That topic did come up, and we viewed it as primarily a law enforcement problem, and I know that some of the Commission discussions yesterday viewed it as a law enforcement problem also. I think we agree, speaking on behalf of the Sport Fishing Institute, with what the Commission was talking about yesterday in that if

you can guarantee that legally caught fish that are allowed in the States are marked in some way, there is a substantial paper trail and that law enforcement efforts are made easier, then there might not be a problem there. But it is a substantial law enforcement problem.

Mr. LANCASTER. Mr. Schill, do you care to comment on this problem of legal and illegal catches and the problems that relate from that?

Mr. SCHILL. Well, certainly our concern is interstate commerce, and certainly when you are trying to transport fish into or out of North Carolina dependent upon whether your sister State is in compliance or not certainly remains to be a problem. Also on page nine, paragraph three gives us a great deal of heartburn. The failure to return to water immediately with a minimum of injury, et cetera, et cetera, any fish to which a moratorium applies certainly would pose problems in several fisheries and particularly the menhaden fishery as well.

Mr. LANCASTER. Further comments on that question? Yes. Mr. Colvin?

Mr. COLVIN. Thank you, Mr. Chairman. One additional point did occur during yesterday's deliberations at ASMFC and that is that clearly all involved in the discussion felt that in the event of a moratorium, under no circumstances should shipment of fish products through a State—in interstate commerce—that was a subject of a moratorium be interdicted. That is generally present practice now in most State and Federal enforcement programs, and there was clearly no intent or support for language that would interfere with that.

Mr. LANCASTER. Should the language though be further clarified to make certain that that is——

Mr. COLVIN. Following discussion, we felt that the language that was in the Commission's draft, which I believe is very similar to the bill on that point, was adequate to cover that concern.

Mr. LANCASTER. Further comments on that question? If not, counsel will have additional questions for the record. We thank you for your testimony, and this concludes the hearing.

[Whereupon, at 3:36 p.m., the Subcommittee was adjourned, and the following was submitted for the record:

103D CONGRESS  
1ST SESSION

# H. R. 2134

To improve the conservation and management of interjurisdictional fisheries along the Atlantic coast by providing for greater cooperation among the States in implementing conservation and management programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1993

Mr. STUDDS (for himself, Mr. MANTON, Mr. HUGHES, Mr. FRANK of Massachusetts, Mr. SAXTON, Mr. TOWNS, Mr. ACKERMAN, and Mrs. BENTLEY) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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## A BILL

To improve the conservation and management of interjurisdictional fisheries along the Atlantic coast by providing for greater cooperation among the States in implementing conservation and management programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Atlantic Coastal Fish-  
5 eries Cooperative Management Act of 1993”.

1 **SEC. 2. STATE-FEDERAL COOPERATION IN ATLANTIC**  
2 **COASTAL FISHERIES MANAGEMENT.**

3 (a) **FEDERAL SUPPORT FOR STATE COASTAL FISH-**  
4 **ERIES PROGRAMS.**—The Secretaries shall develop and im-  
5 plement a program to support the fisheries management  
6 programs of the Commission. The program will include  
7 elements to support and enhance State cooperation in—

8 (1) collection, management, and analysis of  
9 fisheries data;

10 (2) law enforcement;

11 (3) habitat conservation;

12 (4) fisheries research, including biological and  
13 socioeconomic research; and

14 (5) fishery management planning.

15 (b) **FEDERAL REGULATIONS PERTAINING TO A FISH-**  
16 **ERY COVERED BY AN INTERSTATE FISHERY MANAGE-**  
17 **MENT PLAN IN THE ATLANTIC OCEAN.**—

18 (1) **IN GENERAL.**—The Secretary, after con-  
19 sultation with the Councils having jurisdiction over  
20 fisheries to which an interstate fishery management  
21 plan applies, may issue and implement regulations to  
22 govern fishing in the exclusive economic zone that  
23 are necessary to support the effective implementa-  
24 tion of the interstate fishery management plan  
25 adopted for a fishery for which there is not in effect  
26 a Federal fishery management plan. These regula-

tions may include measures recommended by the Commission to the Secretary that are necessary to support the provisions of the interstate fishery management plan for that fishery.

(2) SUPERSEDING REGULATIONS.—Regulations issued by the Secretary to implement a Federal fishery management plan for a fishery shall supersede any regulations issued by the Secretary under this section for that fishery.

(3) ENFORCEMENT.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations issued under this subsection as if such regulations were issued under the Magnuson Fishery Conservation and Management Act.

**SEC. 3. ADOPTION AND IMPLEMENTATION OF INTERSTATE  
FISHERY MANAGEMENT PLANS.**

(a) ADOPTION OF PLANS.—

(1) IN GENERAL.—The Commission shall prepare and adopt fishery management plans or amendments to fishery management plans in accordance

1 with this section to provide for the conservation and  
2 management of coastal fishery resources.

3 (2) CONSULTATION.—In preparing a fishery  
4 management plan or an amendment under this sub-  
5 section, the Commission shall consult with appro-  
6 priate Councils to determine areas where Federal  
7 fishery management plans prepared by Councils  
8 under section 302 of the Magnuson Fishery Con-  
9 servation and Management Act (16 U.S.C. 1853)  
10 and interstate fishery management plans may com-  
11 plement each other.

12 (3) CONTENTS.—Each fishery management  
13 plan or amendment prepared under this subsection  
14 shall—

15 (A) contain information regarding the sta-  
16 tus of the coastal fishery resources and fisheries  
17 covered by the plan or amendment;

18 (B) identify each State that is required to  
19 implement and enforce the plan or amendment;

20 (C) specify actions to be taken by States to  
21 implement and be in compliance with the plan  
22 or amendment; and

23 (D) recommend actions for the Secretary  
24 to take in the exclusive economic zone to con-

1           serve and manage the fishery resources and  
2           fisheries covered by the plan or amendment.

3           (4) TIME FRAME FOR IMPLEMENTATION AND  
4           ENFORCEMENT BY STATES.—

5                   (A) IN GENERAL.—Except as provided in  
6           subparagraph (B), a State that is identified in  
7           an interstate fishery management plan pursu-  
8           ant to paragraph (3)(B) shall implement and  
9           enforce the plan within the time established in  
10          the plan.

11                   (B) EXISTING PLANS.—Not later than 90  
12          days after the date of the enactment of this  
13          Act, the Commission shall develop a schedule  
14          for the implementation and enforcement by  
15          States of interstate fishery management plans  
16          that were adopted by the Commission before  
17          the date of the enactment of this Act. Such  
18          schedule shall provide for that implementation  
19          and enforcement by not later than 1 year after  
20          the date of the enactment of this Act, or in the  
21          case of the Weakfish Plan, by not later than 6  
22          months after that date of enactment.

23           (b) COMMISSION MONITORING OF STATE IMPLEMEN-  
24          TATION AND ENFORCEMENT.—Not later than 1 year after  
25          the date of the enactment of this Act (or in the case of

1 the Weakfish Plan, 6 months after that date) and at least  
2 annually thereafter, the Commission shall—

3 (1) review each interstate fishery management  
4 plan and determine whether each State which has  
5 declared an interest in the plan, or that is required  
6 under the plan to implement and enforce the plan,  
7 has implemented and enforced the plan; and

8 (2) submit a report on the results of that re-  
9 view to the Secretaries.

10 **SEC. 4. STATE NONCOMPLIANCE WITH INTERSTATE FISH-**  
11 **ERY MANAGEMENT PLANS.**

12 (a) DETERMINATION.—The Commission shall deter-  
13 mine that a State is not in compliance with an interstate  
14 fishery management plan if it determines that the State  
15 has not implemented and enforced the plan within the pe-  
16 riod applicable under section 3(a).

17 (b) NOTIFICATION.—If the Commission determines  
18 under subsection (a) that a State is not in compliance with  
19 an interstate fishery management plan, the Commission  
20 shall within 10 working days notify the Secretaries of that  
21 determination. The notification shall include the reasons  
22 for making the determination and specify an explicit list  
23 of actions that the affected State must make to be in com-  
24 pliance with the interstate fishery management plan. The

1 Commission shall provide a copy of the notification to the  
2 State.

3 (c) MONITORING; WITHDRAWAL OF DETERMINA-  
4 TION.—After making a determination under subsection  
5 (a) regarding a State, the Commission shall continue to  
6 monitor implementation and enforcement by the State.  
7 Upon finding that a State has taken the actions specified  
8 by a notification under subsection (b), the Commission  
9 may withdraw its determination. The Commission shall  
10 promptly notify the Secretaries of any such withdrawal.

11 **SEC. 5. SECRETARIAL ACTION.**

12 (a) SECRETARIAL REVIEW OF COMMISSION DETER-  
13 MINATION OF NONCOMPLIANCE.—Within 30 days after  
14 receiving a notification regarding a State from the Com-  
15 mission under section 4(b), the Secretary, in consultation  
16 with the Secretary of the Interior, shall review the Com-  
17 mission's determination of noncompliance and determine  
18 whether—

19 (1) the State has filed to implement and en-  
20 force the interstate fishery management plan in  
21 question; and

22 (2) the measures which the State has filed to  
23 implement and enforce are necessary for the con-  
24 servation and management of the fishery in ques-  
25 tion.

1 (b) COMMENTS.—In making a finding under sub-  
2 section (a), the Secretary shall solicit, review, and consider  
3 the comments of the Commission, the affected coastal  
4 State, and the appropriate Councils.

5 (c) DECLARATION OF MORATORIUM.—Upon deter-  
6 mining under subsection (a) that a State has failed to im-  
7 plement and enforce an interstate fishery management  
8 plan, the Secretary shall declare a moratorium on fishing  
9 for the species covered by the plan within the waters of  
10 that State.

11 (d) SUSPENSION OF MORATORIUM.—Upon notifica-  
12 tion by the Commission of its withdrawal under section  
13 4(c) of a determination of noncompliance by a State, the  
14 Secretary shall terminate any moratorium declared under  
15 subsection (c) with respect to that noncompliance.

16 (e) REGULATIONS.—The Secretary, shall promulgate  
17 regulations necessary to implement this section. Such reg-  
18 ulations may provide for the possession and use of fish  
19 which have been produced in an aquaculture operation,  
20 subject to applicable State regulations.

21 (f) PROHIBITED ACTS DURING MORATORIUM.—Dur-  
22 ing the time in which a moratorium is in effect, it is un-  
23 lawful for any person to—

1           (1) engage in fishing for any species of fish to  
2       which the moratorium applies within waters of the  
3       State that is subject to the moratorium;

4           (2) land, attempt to land, or possess fish that  
5       are caught, taken, or harvested in violation of the  
6       moratorium, this Act, or any regulation issued under  
7       this Act;

8           (3) fail to return to the water immediately, with  
9       a minimum of injury, any fish to which the morato-  
10      rium applies that are taken incidental to fishing for  
11      species other than those to which the moratorium  
12      applies;

13          (4) to land, within a State that is subject to a  
14      moratorium, any fish to which the moratorium ap-  
15      plies, regardless of where it was caught;

16          (5) refuse to permit any officer authorized to  
17      enforce the provisions of this Act to board a fishing  
18      vessel subject to the person's control for purposes of  
19      conducting any search or inspection in connection  
20      with the enforcement of this Act;

21          (6) forcibly assault, resist, oppose, impede, in-  
22      timidate, or interfere with any such officer in the  
23      conduct of any search or inspection under this Act;

24          (7) resist a lawful arrest for any act prohibited  
25      by this section;

1 (8) ship, transport, offer for sale, sell, purchase,  
2 import, or have custody, control, or possession of,  
3 any fish taken or possessed in violation of this Act;  
4 or

5 (9) interfere with, delay, or prevent, by any  
6 means, the apprehension or arrest of another person,  
7 knowing that such other person has committed any  
8 act prohibited by this section.

9 (g) PENALTIES.—

10 (1) CIVIL PENALTY.—Any person who commits  
11 any act that is unlawful under subsection (f) of this  
12 section shall be liable to the United States for a civil  
13 penalty as provided by section 308 of the Magnuson  
14 Fishery Conservation and Management Act (16  
15 U.S.C. 1858). Subsections (b) through (e) of section  
16 308 of the Magnuson Fishery Conservation and  
17 Management Act (16 U.S.C. 1858(b)–(e); relating to  
18 review of civil penalties, action upon failure to pay  
19 assessment, compromise, and subpoenas) apply to  
20 penalties assessed under this paragraph to the same  
21 extent and in the same manner as if those penalties  
22 were assessed under subsection (a) of that section.

23 (2) CRIMINAL PENALTIES.—Any person who  
24 commits an act prohibited by paragraph (5), (6),  
25 (7), or (9) of subsection (f) is guilty of an offense

1 punishable under subsections (a)(1) and (b) of sec-  
2 tion 309 of the Magnuson Fishery Conservation and  
3 Management Act (16 U.S.C. 1859).

4 (h) CIVIL FORFEITURES.—

5 (1) FORFEITURE.—Any vessel (including its  
6 gear, equipment, appurtenances, stores, and cargo)  
7 used, and any fish (or the fair market value thereof)  
8 taken or retained, in any manner, in connection  
9 with, or the result of, the commission of any act that  
10 is unlawful under subsection (f), shall be subject to  
11 forfeiture to the United States as provided in section  
12 310 of the Magnuson Fishery Conservation and  
13 Management Act (16 U.S.C. 1860).

14 (2) DISPOSAL OF FISH.—Any fish seized pursu-  
15 ant to this Act may be disposed of pursuant to the  
16 order of a court of competent jurisdiction or, if per-  
17 ishable, in a manner prescribed by regulation issued  
18 by the Secretary.

19 (i) ENFORCEMENT.—A moratorium declared under  
20 subsection (c) shall be enforced by the Secretaries and the  
21 Secretary of the Department in which the Coast Guard  
22 is operating, as provided in section 311 of the Magnuson  
23 Fishery Conservation and Management Act (16 U.S.C.  
24 1861 et seq.). The Secretaries may, by agreement, on a  
25 reimbursable basis or otherwise, utilize the personnel,

1 services, equipment (including aircraft and vessels), and  
2 facilities of any other Federal department or agency and  
3 of any agency of a State in carrying out that enforcement.

4 **SEC. 6. FINANCIAL ASSISTANCE.**

5 The Secretaries may provide financial assistance to  
6 the Commission and to the States to carry out their re-  
7 spective responsibilities under this Act, including—

8 (1) the preparation, implementation, and en-  
9 forcement of interstate fishery management plans;  
10 and

11 (2) State activities that are specifically required  
12 within such plans.

13 **SEC. 7. DEFINITIONS.**

14 In this Act the following definitions apply:

15 (1) **COASTAL FISHERY RESOURCES.**—The term  
16 “coastal fishery resource” means species of fish that  
17 move among, or are broadly distributed across—

18 (A) waters under the jurisdiction of 2 or  
19 more States that border the Atlantic Ocean; or

20 (B) waters under the jurisdiction of any  
21 State that borders the Atlantic Ocean and wa-  
22 ters of the exclusive economic zone.

23 (2) **COMMISSION.**—The term “Commission”  
24 means the Atlantic States Marine Fisheries Commis-  
25 sion constituted under the interstate compact con-

1       sented to and approved by the Congress in the Acts  
2       of May 4, 1942 (56 Stat. 267), and August 19,  
3       1950 (64 Stat. 467).

4           (3) COUNCILS.—The term “Councils” means  
5       the Regional Fishery Management Councils estab-  
6       lished under section 302 of the Magnuson Fishery  
7       Conservation and Management Act (16 U.S.C.  
8       1852) with jurisdiction over fisheries in the Atlantic  
9       Ocean.

10          (4) EXCLUSIVE ECONOMIC ZONE.—The term  
11       “exclusive economic zone” means that portion in the  
12       Atlantic Ocean of the exclusive economic zone estab-  
13       lished by Presidential Proclamation Number 5030,  
14       dated March 10, 1983.

15          (5) FEDERAL FISHERY MANAGEMENT PLAN.—  
16       The term “Federal Fishery management plan”  
17       means a fishery management plan prepared by a  
18       Council or the Secretary under the Magnuson Fish-  
19       ery Conservation and Management Act (16 U.S.C.  
20       1801 et seq.).

21          (6) FISH.—The term “fish” means finfish, mol-  
22       lusks, crustaceans, and all other forms of marine  
23       animal life other than marine mammals and birds.

24          (7) FISHERY.—The term “fishery” has the  
25       meaning given that term in section 3 of the Magnu-

1 son Fishery Conservation and Management Act (16  
2 U.S.C. 1802).

3 (8) FISHING.—The term “fishing” has the  
4 meaning given that term in section 3 of the Magnu-  
5 son Fishery Conservation and Management Act (16  
6 U.S.C. 1802).

7 (9) IMPLEMENT AND ENFORCE.—The term  
8 “implement and enforce” means the enactment or  
9 adoption and the enforcement of statutes, regula-  
10 tions, or rules as required to—

11 (A) comply with the provisions of an inter-  
12 state fishery management plan; and

13 (B) assure compliance with such laws, reg-  
14 ulations, or rules by persons participating in a  
15 fishery that is subject to such plans.

16 (10) INTERSTATE FISHERY MANAGEMENT  
17 PLAN.—The term “interstate fishery management  
18 plan” means—

19 (A) a fishery management plan or amend-  
20 ment adopted by the Commission under section  
21 3; and

22 (B) any other plan for managing a coastal  
23 fishery resource that was adopted by the Com-  
24 mission before the date of the enactment of this

1           Act, and any amendment to such a plan adopt-  
2           ed before the date of the enactment of this Act.

3           (11) SECRETARIES.—The term “Secretaries”  
4           means the Secretary of Commerce and the Secretary  
5           of the Interior.

6           (12) SECRETARY.—The term “Secretary”  
7           means the Secretary of Commerce.

8           (13) STATE.—The term “State” means each of  
9           Maine, New Hampshire, Massachusetts, Rhode Is-  
10          land, Connecticut, New York, New Jersey, Penn-  
11          sylvania, Delaware, Maryland, Virginia, North Caro-  
12          lina, South Carolina, Georgia, Florida, the District  
13          of Columbia, and the Potomac River Fisheries Com-  
14          mission.

15          (14) WEAKFISH PLAN.—The term “Weakfish  
16          Plan” means the Interstate Fisheries Management  
17          Plan for Weakfish prepared by the Commission,  
18          dated October 1985, and all amendments thereto re-  
19          lated to fishing for weakfish that are formally adopt-  
20          ed before the date of the enactment of this Act.

21   **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

22          There are authorized to be appropriated to the Sec-  
23          retaries such sums as may be necessary for the purposes  
24          of carrying out the provisions of this Act.

STATEMENT  
OF  
MICHAEL TILLMAN  
ACTING DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES  
NATIONAL MARINE FISHERIES SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT  
MERCHANT MARINE AND FISHERIES COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES

MAY 19, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Dr. Michael Tillman. I am the Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

I appreciate the opportunity to appear before this Subcommittee to present the Department of Commerce's (Department) views on the management of interjurisdictional fisheries.

Under the Subcommittee's draft bill, the Atlantic States Marine Fisheries Commission (ASMFC) would monitor the implementation and enforcement of the provisions of all ASMFC Interstate Fishery Management Plans (Plans) by each of the coastal states. States not implementing measures consistent with the provisions of a Plan, or not adequately enforcing such measures, would be reported by the ASMFC to the Secretary of

Commerce and the Secretary of the Interior (Secretaries) as being out of compliance with a Plan. If the Secretary of Commerce (Secretary), in consultation with the Secretary of the Interior, agrees that a state is out of compliance with a Plan, the Secretary would declare a moratorium on fishing for the species covered by the Plan in the coastal waters of that state. The moratorium would be lifted upon notice from the ASMFC that the state has taken appropriate remedial action.

Other provisions of the draft bill include Federal support for state coastal fisheries programs, implementation of regulations in the exclusive economic zone by the Secretary in the absence of a fishery management plan under the Magnuson Fishery Conservation and Management Act (Magnuson Act), and financial assistance by the Secretaries to ASMFC and the states to carry out the provisions of the draft bill.

The Department strongly supports the basic concept of the Subcommittee's draft bill to use the ASMFC as the centerpiece for a renewed and strengthened effort to conserve and manage the coastal migratory fishery resources along the Atlantic seaboard. This approach builds upon successful efforts under the Atlantic Striped Bass Conservation Act (ASBCA), which has been largely responsible for the ongoing recovery of that species. The Department supported reauthorization of the ASBCA each time it was considered for reauthorization. We anticipate that passage

of the draft bill would promote the recovery of several other distressed Atlantic coast stocks, including weakfish and summer flounder, similar to the recovery being witnessed for striped bass under the ASBCA.

Several species on the Atlantic coast are badly in need of improved management. Indeed, the ASMFC has already prepared a list of species which it believes are in need of interstate cooperative management by member states which declare an interest in those species. The ASMFC list includes: American eel, American lobster, American shad, Atlantic croaker, Atlantic menhaden, Atlantic sea herring, Atlantic sturgeon, black drum, black sea bass, bluefish, blue crab, mullet, northern shrimp, red drum, river herring, scup, Spanish mackerel, spot, spotted sea trout, summer flounder, winter flounder and weakfish. Many of these species are extremely important to the commercial and/or recreational fisheries of the Atlantic coast -- especially the summer flounder, bluefish, and American lobster.

Although three Regional Fishery Management Councils on the Atlantic coast are attempting to manage several of these resources under fishery management plans prepared under the authority of the Magnuson Act, the nature of these resources and the more coastal location of these fisheries preclude any consideration by the Secretary of applying the provisions of Section 306(b) of the Magnuson Act to overcome adverse state

action or inaction. In other words, fisheries for these species take place predominately in state waters, and thus the Secretary is unable to invoke the preemption procedures of Section 306(b). Therefore, we believe it is imperative that an alternative legislative mechanism, similar to the approach offered in the draft bill, be provided to deal with situations in which one or more states (whether by their adverse actions or inactions) are able to stymie a cooperative interstate management strategy supported by the majority of cooperating states.

In particular, the populations of weakfish and summer flounder have experienced very high levels of fishing mortality in recent years. Since immediate reduction of exploitation rates can only be accomplished through regulatory action by the states, passage of a mechanism similar to the draft bill would provide significant legislative support and incentive for them to implement appropriate management measures for these species.

While we strongly support a strengthened coastal fishery management program that builds upon the established expertise of the ASMFC and its constituent states, some changes to the draft bill are necessary to insure its constitutionality and to further improve its effectiveness.

We expect to provide the Subcommittee with our detailed comments shortly. We have two potential constitutional questions concerning the draft bill that we are presently reviewing. The first concern involves the proper method of amending an existing interstate compact. The second concern involves a possible Appointments Clause issue regarding the use of a non-Federal agency (ASMFC) to develop interstate fishery management plans that will be enforced by a moratorium imposed under Federal law.

In addition, we are reviewing and may present to the Subcommittee for its consideration a few suggestions that we believe would improve the implementation and enforcement of the draft bill's provisions.

In conclusion, Mr. Chairman, the Department finds the circumstances currently surrounding the management of migratory, interstate fisheries along the Atlantic coast roughly parallel to circumstances surrounding the management of migratory waterfowl earlier in the century which led to the enactment of the Migratory Bird Treaty Act. No single state, acting on its own and out of synchrony with other involved states, can hope to manage effectively coastal migratory fishes and fisheries which transcend multiple state jurisdictions. On the other hand, adverse action or inaction by any single state can effectively stymie the cooperative efforts of many states, acting in concert

with one another, to manage effectively such resources. The provisions of the draft bill, if enacted, would go a long way toward resolving the potentially disastrous consequences that the recalcitrancy of any single state can have on the management efforts of other states acting cooperatively.

Thank you, Mr. Chairman and Members of the Subcommittee for this opportunity to express the views of the Department. I would be pleased to answer any questions you may have.

STATEMENT OF DONALD BARRY, COUNSELOR TO THE ASSISTANT SECRETARY  
FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR,  
BEFORE THE HOUSE MERCHANT MARINE AND FISHERIES SUBCOMMITTEE ON  
FISHERIES MANAGEMENT CONCERNING THE DRAFT ATLANTIC COASTAL  
FISHERIES COOPERATIVE MANAGEMENT ACT OF 1993

May 19, 1993

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Good afternoon, I am Don Barry, Counselor to the Assistant Secretary of the Interior for Fish and Wildlife and Parks. I am appearing here today on behalf of Secretary Babbitt. It is indeed a pleasure to return to my old Committee. I look forward to working with you on this and other issues.

Mr. Chairman, the Department of the Interior strongly supports the intent of the draft Atlantic Coastal Fisheries Cooperative Management Act of 1993. However, we are still reviewing the subcommittee's draft bill within the Administration, and will provide you with our suggested amendments to the draft bill as soon as possible.

The Department of the Interior proposes several actions to ensure the long-term viability of coastal fish populations. Numerous fish populations are on the decline or at historic low levels of abundance due to habitat loss and alteration, pollution, and overfishing. Specific examples along the Atlantic coast include weakfish and summer flounder populations. Total commercial and recreational catch of weakfish dropped from an estimated 78.5 million pounds in 1980 to 11.4 million pounds in 1990. Based on tow survey indices, summer flounder stock biomass is at the

lowest average level since the late 1960s and early 1970s.

The draft bill will facilitate the conservation, restoration, and cooperative management of these and other valuable interjurisdictional fishery resources along the Atlantic coast for both recreational and commercial fishermen.

To stem the current rate of decline of our coastal fishery resources, the States, the Atlantic States Marine Fisheries Commission (Commission), the Federal government, and the private sector must work together to develop, implement, and enforce scientifically based management plans that will prevent overfishing, and provide for continued, sustainable harvest. These management plans must be based on the best scientific information available.

To conserve coastal fishery resources, we must work cooperatively to identify and reduce other factors that adversely impact populations, such as habitat loss, pollution, and nonindigenous species. Fishery restoration should be undertaken as part of a broader ecosystem based approach. Such an approach should focus on: (1) identifying important habitats, such as those used for spawning, overwintering, growth, or residency; (2) providing for the monitoring of the status of habitat; and (3) recommending actions to reduce degradation of habitat. Also, habitat improvement, such as wetlands restoration, must be an important

plan objective. Wetlands are critically important nurseries for many fish stocks.

To address habitat issues, the Commission should establish a process for reviewing potential actions that will affect them. Once this process is established, the Commission will be able to effectively comment to those agencies that regulate actions affecting habitat areas. Furthermore, those regulatory agencies should give serious consideration to the recommendations provided by the Commission.

To ensure that all States fully implement Commission adopted Interstate Fishery Management Plans (Plans), mechanisms for accountability must be in place. While Atlantic coastal States participate in the development of Plans, they are not required to implement and enforce management measures identified in adopted Plans. The resulting inconsistent management strategies have contributed to the continued decline of Atlantic coastal fisheries. The exception is the Atlantic coastal migratory stock of striped bass for which Plan implementation and enforcement is required under the Atlantic Striped Bass Conservation Act. Thanks in part to coordinated actions of the Commission and Federal and State agencies, striped bass populations are rebounding along the Atlantic Coast. Of the 17 Plans that have been adopted by the Commission, only three have been fully implemented (striped bass, Northern shrimp, and spotted

seatrout).

This lack of enforceability and accountability of management actions must be reversed. Failure to embrace the identified management measures clearly increases the risk of further depleting valuable fishery resources. In addition, failure by one or more management jurisdictions to comply with recommended management measures decreases the ability of other jurisdictions to successfully implement their management Plans.

In addition, data from noncompliant States may not be available, or may not conform to data needs of management Plans. As a result, critical data necessary to determine stock status may not be available, thereby limiting the ability to make sound, biologically-based management decisions.

The draft legislation being discussed today, is similar to that developed under the Atlantic Striped Bass Conservation Act for restoration of Atlantic striped bass populations. The Atlantic Striped Bass Conservation Act promotes conservation and cooperative management; ensures accountability by requiring States to implement and enforce the Commission's Plan; and through the Federal moratorium clause, provides a strong incentive for the States to implement and enforce management measures of the Plan. As a result of extraordinary cooperative efforts between the Department of the Interior's Fish and

Wildlife Service (Service), the Department of Commerce's National Marine Fisheries Service, 12 Northeastern and Mid-Atlantic States, the District of Columbia, and the Potomac River Fisheries Commission, Atlantic coastal migratory striped bass populations are no longer considered to be on the decline. Their recovery is evidenced by the opening of a limited (transitional) fishery along the Atlantic coast in 1990.

The Department of the Interior, through the Fish and Wildlife Service provides both technical and financial assistance to the States to support management of interjurisdictional coastal fishery resources. Through administration of the Wallop-Breaux fund, the Service provides Federal Aid funds to the States to conduct research, surveys, and monitoring programs on marine, estuarine, and anadromous fish species. The Service also provides significant Federal Aid dollars to the Commission in support of their efforts. The Service has expertise in population modeling and stock assessment, provides widespread fishery assistance (technical and coordination), has fish propagation and technology development capabilities, and has made a strong commitment to habitat conservation.

The Department is directly involved with the estuarine environment through a myriad of Service programs and activities. With estuarine associated fisheries providing significant benefits to the U.S. economy, the fisheries program is a central

focus of the Service in its coastal efforts. In fact, approximately 50 percent of the Service's fisheries activities are related to coastal fisheries and their habitats. The Service has conducted or evaluated population estimates and modeling, tagging, propagation, and habitat activities on a variety of marine species including, red drum, spotted seatrout and Pacific halibut. Approximately two-thirds of all Section 404 permits reviewed by the Service pertain to coastal resource and habitat issues. Approximately 40% of the Service's National Wildlife Refuges (Refuges) are coastal, including about 60 Refuges located along the Atlantic coast that total approximately 800,000 acres. The focus of the Service's Bay Estuary Program is to develop and implement ecosystem-based policies and programs that protect and enhance coastal living resources.

Under the Anadromous Fish Conservation Act and the Federal Power Act, the Department of the Interior has authority for involvement with anadromous species. Presently, the Commission has 3 Plans, representing 6 species (Atlantic sturgeon, striped bass, American shad, alewife, hickory shad and blueback herring) that provide for the management of anadromous fish. Our Atlantic coastal Regional offices actively participate in implementation of these Plans and have been especially involved in the restoration of American shad and river herring populations in the Merrimack, Connecticut, Delaware, and Susquehanna Rivers. The Service has also strongly supported the Chesapeake Bay striped bass

restoration program through production of hatchery fish, coordination of a coast-wide tagging program, and extensive study and assessment of the Albemarle Sound and Roanoke River striped bass stock. The Service actively participated in the development of the Commission's Atlantic Sturgeon Plan and presently serves on the Plan Review Team. Activities include development of propagation techniques and assisting the States in a tagging effort to determine migration and exploitation rates of Atlantic sturgeon populations.

The Departments of the Interior and Commerce, each with their own unique capabilities and expertise, have in a coordinated manner worked cooperatively with the States through the Commission to successfully reverse the decline of striped bass, one of the Atlantic coast's most valuable fisheries.

Coastal waters provide habitat for anadromous fishes and serve as a transition zone between inland waters and Federally regulated marine waters. Cooperation between the Departments of the Interior and Commerce promotes and ensures: (1) coordination that forges necessary partnerships between all entities having jurisdictional responsibilities for fisheries and the habitats they depend upon; (2) ecosystem management that will be successful only if partnerships are established among all management entities; and (3) optimal and efficient use of fiscal and personnel resources.

Mr. Chairman, this concludes my prepared testimony. I would be pleased to respond to any questions you or other members of the Subcommittee may have.

Statement of  
PHILIP G. COATES  
Chairman, Atlantic States Marine Fisheries Commission

before the  
Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries  
House of Representatives

May 19, 1993

Mr. Chairman and Members of the Committee,

Good afternoon. I am Philip G. Coates, Director of the Division of Marine Fisheries for the Commonwealth of Massachusetts. I am also honored currently to serve as Chair of the Atlantic States Marine Fisheries Commission, and it is in this capacity that I appear before you today.

The subject of today's hearing is new federal legislation to improve the process for implementation of cooperative interstate fisheries management programs along the Atlantic coast. This is an issue that will greatly influence the states and the Commission, and one that ASMFC has spent much effort on over the past few years. Even this week, the question has received much discussion within the Commission at our Spring Meeting, as we strive to recommend sound policy for the conservation and management of valuable coastal fisheries. My testimony today will focus on the nature of the problems of cooperative interstate fisheries management and comment on the major provisions of legislation being considered by the subcommittee.

The Atlantic States Marine Fisheries Commission was formed over fifty years ago when the fifteen Atlantic coast states entered into a Compact that was ultimately approved by Congress. The Compact stated that the purpose of the states in coming together to form the Commission was:

... to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause.

Over the five decades of its existence, the Commission has successfully carried out a vast array of programs on behalf of its member states. For the past decade or so, the principal orientation of the Commission's activities has been toward the coordination of fishery conservation and management programs for coastal fisheries. This has been carried out through the Commission's Interstate Fisheries Management Program (ISFMP). Through the ISFMP, the states have come together to adopt nineteen fishery management plans covering over twenty major coastal species.

The program for which the Commission is principally known, the conservation and management of Atlantic Striped Bass, is perhaps the best example of how states and the federal government can come together and achieve successful conservation, and even recovery, of valuable coastal fisheries. Striped bass have been a principal issue for the Commission from the earliest days of its existence. In the 1980's, stripers experienced a precipitous and serious decline in the coastal resource that demanded coordinated and responsive action. Through the Commission, and with the active support of the federal government, the states responded with a series of management actions aimed at restoration of this uniquely valuable species. Over the past four years, we have all seen the positive results of this action. The striped bass resource along the Atlantic coast has rebounded almost everywhere it is found. It is one of the outstanding examples of fisheries conservation that works. Striped bass management is still problematic and controversial. But at least today we are confronted with questions about the best way to use this resource rather than the

need for increasingly painful measures aimed at turning around a decline.

Among the reasons that striped bass management has been so successful is the cooperation among various jurisdictions. The states have worked together with the federal government through the Commission to achieve a common goal. One of the integral parts of this program has been the Atlantic Striped Bass Conservation Act, which provides an effective framework for insuring that needed actions take place. The states, the Commission and our federal partners can be justifiably proud of the progress that has been made, while at the same time seeing these efforts through to full recovery.

Other coastal fishery resources today are facing the same kinds of problems that striped bass did in the 1980s. Recent fishery management plans for summer flounder and weakfish have focused on the critical need for cooperative measures to conserve these species. As fishing effort naturally diverts away from stressed resources, it often places new burdens on other species — which in turn become stressed themselves. Only a comprehensive and coordinated program, with all jurisdictions that have authority working together, can effectively address these problems.

These and other examples underscore the need for effective cooperation among all the states in order to provide for needed conservation. We find, however, that it is often easier for states to agree on what should be done than it is for them to do it. The former — agreeing on what is necessary — has been successfully accomplished for many years and in a wide variety of circumstances through the Commission and the ISFMP. There have been continuing problems, however, with the ability of many states to follow through with implementation of what they have agreed through the Commission to do.

The Commission has concluded that this is a serious problem. It affects

fishery management in three ways. First, lack of full state implementation of needed conservation measures could directly affect the resource. Second, incomplete participation by all states in a fishery management program could jeopardize data collection and other ancillary activities necessary to make the conservation program work. Third, any state's lack of full implementation makes it difficult for neighboring states to maintain restrictive measures on their fishermen when they perceive that their brethren in an adjoining state — perhaps even fishing in the same waters — are not equally restricted.

There are a number of ways that this could be addressed. After long consideration the Commission concluded that building upon the successful experience in striped bass management would be the most workable and effective approach. As a result, at our Golden Anniversary meeting two years ago, the Commission adopted the following position:

*The Commission supports new federal legislation to improve the effectiveness of interstate cooperation in conserving and managing marine fisheries along the Atlantic coast. This legislation should improve the partnership between the States and the federal government; provide incentives to the States (including financial incentives and the potential for moratoria) to improve cooperation; and provide a substantial role for the States in deciding when and how those incentives will be applied.*

This was a major step for the states in recognizing their responsibilities in making conservation and management of coastal fisheries work effectively. In the intervening year and a half, the Commission has worked cooperatively with other constituent groups and this Committee to develop the right legislative approach that would implement this position. We have found many problems with proposals that either focused on species-specific measures, or that were so complicated as to be unworkable. We have also steadfastly believed that new federal legislation should focus on the principal role of the states in managing coastal fisheries, with the federal government in a supporting role to help insure that mutually agreed upon

state action is effective.

The legislation that the Committee is currently considering clearly goes a long way toward addressing the issues about which the Commission has been concerned. It avoids many of the complexities and emphasis on federal action that troubled some of the bills considered by Congress last year. It emphasizes the role of the states. It builds on the success of the striped bass model and applies it generically to other Atlantic coastal species.

Mr. Chairman, I would, however, like to share a number of concerns that could be expected to cause problems for the states that are in the draft legislation. I believe that these are serious problems that could jeopardize the ability of the states to support the bill.

One issue that has been problematic in developing this legislation is the question of how much time states would have to come into compliance with existing plans. The bill would allow up to 90 days for the Commission to develop a schedule for implementation of existing plans, not to exceed one year from date of enactment. We are concerned that this is just not workable. In many states, legislative action will be required to come into compliance. Legislative calendars, as any member of Congress will recognize, are subject to wide and diverse pressures. In some cases, state legislatures are limited regarding how often or how long they are allowed to meet, or with respect to the issues that may be brought up. It could simply be impossible for a state that requires legislative action to meet the time frames contained in the bill. This may also be a problem for states that must comply with requirements of state administrative procedures statutes.

Let me note that the problem for the states here is not really that different from the difficulties faced by the federal government. The Congress, and many of the state directors who are members of Regional Fishery Management Councils, have

been frustrated by the time-consuming nature of the federal regulatory process. Congress has tried a number of times to force the process to work in a more timely fashion, but as yet without satisfactory results. It is unrealistic and unfair to expect that the states should be more closely held to a strict time standard than the federal government is able to meet itself.

One suggestion for dealing with this problem would be to allow the federal government, in declaring a moratorium on fishing for a species in state waters, to establish the actual effective date of the moratorium at some point in the future; but not to exceed six months from the date of declaration of the moratorium. This approach would have significant advantages. It would allow an additional opportunity for states to meet internal procedural requirements. It would, at the same time, establish a degree of certainty. The states would not be speculating about threatened federal action — a decision will have been made that will take effect at a time certain unless a state acts. The Committee should consider whether this might be a more practical and effective approach than the language currently contained in the bill.

A second problem that should be anticipated is the special provision for weakfish that is contained in the bill. The bill would allow the states only six months to come into compliance with the Commission's current weakfish fishery management plan. This is unwarranted and would create an unnecessary disparity in the approach taken by the bill. One of the strengths of this bill, and in my view an essential element, is the recognition of and reliance upon the prominence of the states in determining how to approach conservation and management of coastal fishery resources. This provision would single out a particular species above all others for special treatment, without regard to the overall program for management of coastal fisheries that the states, through the Commission, have under way. There is no question that this species needs conservation. The Commission's program for managing weakfish is constantly responding to the changing conservation needs of

the species, and is likely to be revised again before this bill becomes law. The Commission is always striving to be flexible and responsive to current circumstances. This provision unnecessarily imposes a distinct federal requirement where it is unwarranted.

Weakfish need help. But the process is working. The Commission's Weakfish Technical Committee will be meeting during the first week of June to consider the most recent scientific information. The Weakfish Management Board will be meeting shortly thereafter to determine the next steps that should be taken in weakfish conservation. Any specific provisions of the bill relating to weakfish will inevitably and artificially affect how these future decisions are made.

This bill — in its entire theory and concept — relies on the good judgment of the states to determine what is necessary for Atlantic coastal fishery resources. The Congress should stick with this principle for all fisheries, including weakfish. Any species-specific provisions detract from the overall strength of the bill. I would urge that this special treatment for one species be dropped.

A last issue that I would like to raise today with the Committee today is the role of the two federal agencies that are concerned with interjurisdictional fisheries — the National Marine Fisheries Service and the United States Fish and Wildlife Service. The Commission's position has been that for the process to work effectively, all of the affected agencies must work fully as partners. The Fish and Wildlife Service has been intimately involved in the Commission's fishery management program for many years. The Service is continuing to commit significant resources to fisheries management assistance. It has legislative responsibility for many coastal, estuarine, and in particular anadromous resources along the Atlantic coast. Programs administered by the Fish and Wildlife Service provide essential funding to the states and the Commission. The Service is truly a full operating partner in the conservation of coastal fishery resources. In many regards, the Fish

and Wildlife Service provides broader, more inclusive support for state coastal fishery programs than does the National Marine Fisheries Service.

In recognition of this, it seems only logical and fair to us that the Fish and Wildlife Service share decision making responsibility fully with the National Marine Fisheries Service. The bill goes a long way in this direction; but on the question of deciding whether to impose a moratorium the bill would only provide a consultative role for the Secretary of the Interior. Given the essential partnership nature of this program, this limitation is unwarranted and could easily be counterproductive. Coastal fishery resources need more involvement and cooperation from all agencies involved, not less. The bill should give all partners in this process a strong incentive to cooperate, rather than only partially include any of them.

Mr. Chairman, the Atlantic States Marine Fisheries Commission believes that much progress has been made in developing federal legislation to implement its policy favoring increased efforts to improve interstate cooperation in the implementation of needed conservation and management for coastal fishery resources. The bill before the Committee is certainly on the right track, although it still needs revisions, some of which I have discussed today. We at the Commission look forward to continuing to work with the Committee to develop appropriate and effective legislation.

Thank you, Mr. Chairman, for the opportunity to be here today. I would be pleased to try to respond to any questions the Committee may have.

SUPPLEMENTAL MATERIAL FOR THE RECORD:  
TESTIMONY OF PHILIP G. COATES

The Atlantic States Marine Fisheries Commission does not at this time formally make determinations whether individual states are in compliance with its plans, with the exception of striped bass because of the requirements of the Atlantic Striped Bass Conservation Act. If new federal legislation such as H.R. 2134 is passed, the Commission would begin this process for other species as well. However, the Commission staff has prepared the following matrix which compares, in summary fashion, the requirements of Commission fishery management plans with the status of state implementation.

STATE RESPONSE TO ASMFC RECOMMENDATIONS 4/03

Species & States with An Interest	ASMFC Recommendations	ME	NH	MA	RI	CT	NY	NJ	PA	DE	MD	VA	NC	SC	GA	FL	DC
Summer	14" size limit, rec.	13	13	14	14	14	14	14	14	14	13	13	13				
Fall/Winter	12" size limit, comm.	13	14	14	14	14	14	13	14	14	13	13	13				
Commercial quota		##	X	X	X	X	X	X	X	X	X	X	X				
Rec Season		X	X	X	X	X	X	X	X	X	X	X	X				
10 bin bag limit		0	6	6	6	6	6	6	6	6	10	10					
5 1/2" mesh		5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2	5 1/2				
A. Lobster 7/02" carapace size limit		3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4	3 1/4				
ME-NH																	
N. Shrimp	variable season	X	X	X													
ME-NH	1 3/4" mesh	1 3/4	1 3/4	1 3/4													
Red Drum	10" 27" or 14" 27"	X	18-27	14													
ME-FL	1 > 27" or 0	0-27	5														
Spot	5 fish limit																
Spot	12" size limit																
Seabrook																	
MD-FL																	
Menhaden	no restrictions at this time																
Weakfish	11" size limit, rec.	16	18	16	16	16	16	13-12			13	10	12-10	10			
ME-FL	11" size limit, comm.	16	18	16	12	16	6	13	12	10							
Spot	Control mortality																
DE-FL	size limit age 1+																
Croaker	size limit < age 1+																
DE-FL																	
Hard Clam	1" increase, no tolerance	1+	1	1+	1	1	1	1	1	1+	1	1	1	1	1	7/8x	
ME-FL																	
Shad & Bluegill	in-mear mortality	X															
Herring	no ocean intercept fisheries																
ME-FL																	
Bluegill	10 bin bag limit	10	10	10	10	10	10	10	10	10	10	10	5-24	10	15		
ME-FL	or equivalent conservation																
Atlantic	7 ft. size limit	##	##	##	7'	7'	60"	42"	##	7'	7'	##	##	##	7'	##	##
Shad	or equivalent conservation																
ME-FL																	
Spot	10 bin bag except FL-5 fish																
ME-FL																	
Winter	12" 10" FL size limit	11	11	12	12	11-10	10-9	10									
Flounder	5 1/2" mesh size	X	X	X		4 1/2											
ME-DC																	

## = No fishery allowed # = Partial season X = Implementation ## = Aquaculture \* = Commercial only \*\* = Only Applies to fish over 12" \*\*\* Example pound nets \*\*\* Recreational only

FL = Fork Length TL = Total Length

Presented by Mark Reef  
Research Specialist, IAFWA

**TESTIMONY BEFORE THE  
FISHERIES MANAGEMENT SUBCOMMITTEE OF THE  
MERCHANT MARINE AND FISHERIES COMMITTEE ON THE  
DRAFT ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT  
by R. Max Peterson, Executive Vice President  
International Association of Fish and Wildlife Agencies  
May 19, 1993**

Mr. Chairman and members of the subcommittee, I am R. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies. The International Association of Fish and Wildlife Agencies, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces, and federal governments of the U.S., Canada, and Mexico. All 50 states are members. The Association has been a key organization in promoting sound resource management and strengthening federal, state, and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest. The Association appreciates the opportunity to share our perspectives with you.

We are pleased to discuss the draft bill before the subcommittee to provide for the enhanced management of Atlantic Coastal interjurisdictional fishery resources. This is an area of great importance to state fishery management agencies as states have primary management authority over fishery resources in state territorial waters.

The underlying basis for this bill is the decline and overfishing of Atlantic Coastal fish stocks. To ensure their long-term sustainable yields, these fish must be managed on a cooperative, interstate basis due to their highly migratory nature. This migratory nature causes them to move between states and generally stay within states' coastal waters during much of their life cycle. The absence of such a cooperative management approach could lead to the collapse of these and other migratory fish stocks.

Interstate management plans exist, or could be drafted, for these fisheries, but effective implementation of fishery management plans requires all states to enforce regulations and take management actions consistent with the management plans. If one or more states do not comply with provisions of a plan, the effectiveness of interstate management of the fishery can be defeated. Many of those stocks are so fragile that it is imperative that something be done.

The proposed bill would provide for federal enforcement of provisions for interstate fishery management as determined by the Atlantic Coast states acting through the Atlantic States Marine Fisheries Commission. The recognition of the need for federal intervention illustrates the gravity with which the states see this problem. State managers, under normal circumstances, view such intervention with great concern. The states' recognition of the need for this approach, however, emphasizes the seriousness of the situation regarding these fishery stocks.

This draft bill uses as a model the successful Atlantic Striped Bass Conservation Act, which served to address overfishing of striped bass and the Atlantic Coastal States' inability to gain 100% compliance with an interstate management plan for the species.

The proposed Atlantic Coastal Fisheries Cooperative Management Act provides for an appropriate state-federal relationship with the federal government serving to support the cooperative fishery management efforts of states. This support would include ensuring that regulations in the Exclusive Economic Zone are consistent with those specified in interstate fishery management plans, providing cooperative data collection and research, and where states are

unable to effectively implement and enforce an interstate fishery management plan, the federal government can be called on to aid in plan implementation and enforcement through imposition of a moratorium on fishing in non-compliant states for the species at issue. Upon full implementation and enforcement of an interstate fishery management plan for all states, the federal government would withdraw preemptive actions in previously non-compliant states. The draft bill recognizes the states' proper and recognized jurisdiction over Atlantic Coastal fisheries by ensuring that all federal actions are contingent on determinations by the Atlantic States Marine Fisheries Commission.

The IAFWA supports the approach embodied in the proposed bill for Atlantic Coastal state interjurisdictional fisheries. This support recognizes the role of the Atlantic Coast states in developing the draft language of the bill and the support of the Atlantic States Marine Fisheries Commission. We refer the subcommittee to ASMFC's testimony for a discussion of some minor changes to the draft requested by the Atlantic Coastal states, which would address some specific management concerns of the affected states.

However, the situation along the Atlantic Coast that is being addressed by the draft bill is unique due to the specific migratory characteristics of Atlantic Coastal fishery resources, the history of fishing on these resources, the large number of states traversed by these fish, and the precedence established by the Atlantic Striped Bass Conservation Act in inviting federal assistance to ensure compliance with interstate fishery management plans among the Atlantic Coast states. Similar situations do not exist along the Gulf and Pacific Coasts.

While we support the general provisions of the current bill, we would not support a similar approach to address management of fisheries resources along the Gulf and Pacific Coasts. We make this distinction because of the significant differences along the three coasts between the biological characteristics of fish stocks and between the existing mechanisms for cooperative management among states. We urge the subcommittee to resist the temptation to apply such an approach to the Gulf and Pacific Coasts. Other innovative cooperative fisheries programs will be needed in those areas, and we would be pleased to work with the subcommittee on specific concerns for those areas.

Thank you for the opportunity to share our position with the subcommittee and I would be happy to answer any questions.

**Testimony**

**of**

**Gordon C. Colvin  
Director of Marine Resources**

**New York State Department of  
Environmental Conservation**

**Before the U.S. House of  
Representatives  
Subcommittee on Fisheries  
Management**

**Hearing on Atlantic Coast  
Interjurisdictional Fisheries  
Management**

**May 19, 1993**

Good Afternoon, Mr. Chairman and members of the Subcommittee. On behalf of Commissioner Thomas C. Jorling, I would like to thank the Subcommittee for inviting the New York State Department of Environmental Conservation to testify on the vital subject of managing the migratory marine and anadromous fisheries of the Atlantic coast.

Many species of finfish, crustaceans, and shellfish have been over-harvested by both commercial and recreational fishermen from New York and other coastal states. Important fish stocks such as summer flounder, winter flounder, scup, weakfish, sea bass and cod have been depleted because of overfishing. In order to provide future generations with a sustained harvest, coastal fishery resources must be better managed and fishery abundance must be increased.

Essentially all of New York State's principal marine and estuarine fisheries are migratory and require cooperative management by many coastal states and the federal government. Established mechanisms exist for determining the management needs and implementing Fishery Management Plans interjurisdictional fisheries. In the Exclusive Economic Zone (the zone extending from three miles offshore to 200 miles), such management plans are prepared by Federal Fishery Management Councils, which include states among their members, and must be approved by the Federal National Marine Fisheries Service. For fisheries in state waters, management plans are prepared and adopted by the Atlantic States Marine Fisheries Commission. In Lakes Erie and Ontario, Fisheries Management Plans called lake Plans have been developed for the Great Lakes Fisheries Commission. The recommendations of such plans must then be implemented by each participating state for a plan to be effective.

In 1990 Governor Cuomo appointed a Task Force of citizens, scientists and State agency representatives to assess the status and needs of New York's coastal resources and management program. Among the many issues addressed by the Governor's Task Force on Coastal Resources was the management of fishery resources. One recommendation of the final report, issued in November 1991, was that New York State urge Congress to adopt federal legislation that penalizes states for non-compliance with management plans adopted by the Atlantic States Marine Fisheries Commission. As you know Mr. Chairman, the Atlantic Striped Bass Conservation Act adopted several years ago requires states to implement the provisions of the Commission's Striped Bass Plan under penalty of a federal moratorium on fishing for striped bass in the offending state's water. That Act has effectively assured that all states have implemented the provisions of the Striped Bass Plan. New York State urges that its enforcement provisions be extended to other species such as bluefish, fluke, weakfish and lobster for which a number of individual states have not adopted the Commission's management recommendations.

The Task Force's recommendation recognizes that restrictive management measures to control fishing mortality need to be implemented in virtually all inshore interjurisdictional fisheries of the east coast. However, while states and their scientific advisors may agree readily on how and how much to reduce exploitation, individual states frequently find it difficult to pass legislation or adopt regulations when confronted with strong opposition. If key states fail to implement needed regulation, an entire coastwide management strategy may fail, and an important fishery could collapse. Moreover, when some states adopt restrictive regulations, but their neighbors do not, strong pressures emerge for states to backslide into non-compliance. Legislation which authorizes the federal government to intervene only when an individual state has been unable to implement measures agreed to by the states jointly through the Atlantic States Marine Fisheries Commission preserves an appropriate balance between state and federal interests in

regulation of migratory fisheries in state waters. This approach has effectively resolved the non-implementation problem for striped bass, and needs to be extended to all east coast interjurisdictional species.

With respect to the draft legislation and the specific issues on which you have requested comments, we offer the following:

- o **Roles of the Secretaries of Interior and Commerce** - New York recognizes and appreciates the strong involvement of both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Program. Under the current organization of the federal government, the continuing involvement of both agencies is critical to maintaining this successful state-federal partnership. Therefore, we support establishing a role for each Secretary in implementation of sanctions under the proposed legislation. The consultation process established in Sec. 5(a) of the proposed legislation is one way of establishing such roles.
- o **Time Frames for Plan Implementation** - Section 3(a)(4)(B) of the proposed legislation gives states up to one year following enactment to fully implement and enforce the provisions of most management plans previously adopted by the Atlantic States Marine Fisheries Commission, and six months for weakfish. While we strongly support prompt implementation of all existing management plans, New York recognizes that some states may need more than one year to do so, particularly when state legislative action is needed. We recommend that a maximum period of 18 months be allowed, following adoption of an implementation schedule by the Commission. The proposed 90-day period for the Commission's preparation of such an implementation plan is adequate.

New York is gratified that, under your leadership Mr. Chairman, the Fisheries Management Subcommittee is actively considering legislation which would implement the recommendation of the Governor's Coastal Task Force, and which will help assure implementation of necessary management measures for all east coast fisheries. We urge you to act favorably upon this legislation, and look forward to working with you on other important issues.

WP51:C  
Testi.



# Sport Fishing Institute

1010 Massachusetts Ave., N.W., Washington, D.C. 20001 (202) 898-0770, Fax (202) 371-2085

TESTIMONY OF THE SPORT FISHING INSTITUTE  
ON THE  
MANAGEMENT OF INTERJURISDICTIONAL FISHERIES AND  
THE DRAFT ATLANTIC COASTAL FISHERIES COOPERATIVE  
MANAGEMENT ACT OF 1993

PRESENTED BEFORE THE SUBCOMMITTEE ON FISHERIES MANAGEMENT

ANDREW J. LOFTUS  
RESEARCH SPECIALIST  
SPORT FISHING INSTITUTE  
MAY 19, 1993

*The National Non-Profit Fish Conservation Organization*

Thank you Mr. Chairman and members of the subcommittee for providing this opportunity to express the views of the Sport Fishing Institute (SFI) on the draft Atlantic Coastal Cooperative Fishery Management Improvement Act and on the general concept of interjurisdictional fisheries management. I am Andrew Loftus, fisheries research specialist at SFI. For several years I have been involved with Atlantic coast interjurisdictional fisheries with particular emphasis on the Atlantic Striped Bass Conservation Act and Chesapeake Bay issues.

The Sport Fishing Institute, a nonprofit fisheries conservation and education organization, represents the interests of the sport fishing industry and the tens of millions of American citizens who rely on recreational fishing as a healthy and wholesome leisure activity. Proper management of fish stocks which provide for long-term stability and yield is paramount to providing robust recreational fisheries and to fostering a stable economic climate in which sport fishing related businesses can thrive. As written, the draft interjurisdictional fisheries management bill, with strengthening amendments, will provide for improved management, and as such, is supported by the SFI. The enclosed graph illustrates the dramatic improvement in the striped bass recreational fishery after the passage of the Atlantic Striped Bass Conservation Act in 1985 and serves as an indication of what may be expected to occur with other fisheries if legislation of this nature is passed covering other coastal species.

The current status of Atlantic fisheries is deplorable, and quick passage of legislation of this nature would provide some relief to devastated fisheries. According to the National Marine Fisheries Service, 19 of 38 fish species on the Atlantic coast of major recreational and commercial importance are currently over-exploited, while an additional eight (8) species are at their maximum level of exploitation. The spawning biomass of weakfish and summer flounder, both species being very important to the recreational fishing industry, are at less than five (5) percent of their historical levels. This poor management results in harvests far below their potential, depriving American citizens of the opportunity to optimally reap the benefits of common property resources and costing thousands of jobs and billions of dollars in lost economic activity to coastal communities that depend on a thriving recreational fishing industry. Additionally, continuing delays in implementing sound management brings us closer to the potential for complete collapse of these fisheries. Weakfish and summer flounder have been described as being in worse shape than striped bass were at their low point, and implementation of management plans which have been developed for several years must be immediate.

These data provide ample evidence of a management process which has failed. Inconsistencies in management goals between individual states and between the states and the federal

government's management of species which cross into the Exclusive Economic Zone (EEZ) have lead to a cumulative gross overharvest of fish stocks. Furthermore, attempts to coordinate management programs have, except under extremely rare circumstances, been largely unsuccessful at rehabilitating stocks. Although the Atlantic States Marine Fisheries Commission (ASMFC) was formed through a joint compact between the states more than fifty years ago to improve management of migratory species, stocks continue to decline. The failure of states to fully implement the measures of fishery management plans developed through the ASMFC process has resulted in most states only implementing plans that had minor impact on their resident fishermen, consequently providing little conservation benefits. The ASMFC has adopted 17 fishery management plans, covering more than 20 species, yet to date only three of these plans have been fully implemented by the states. One of these plans, the Striped Bass Plan, was only implemented only after the the leadership in conservation that was provided by this committee.

The Sport Fishing Institute supports the state management of fisheries and fish stocks which are found within the jurisdictional waters of the states. However, migratory fish stocks which pass through several jurisdictions during their lifetime must be collectively managed in order to coordinate management objectives. Discrete stocks of fish must be managed as a unit throughout their range and life cycle and management plans must be based on total mortality rates rather than simply on landing statistics. It is imperative that all management authorities agree and adhere to management measures outlined in coordinated plans. As is the case with weakfish restoration, reluctance by even a single jurisdiction to abide by common management strategies could cause management programs to fail across the entire range of the affected fish stock. Therefore, a mechanism which provides the states with enforceability must be implemented. Such a mechanism is successfully embodied in the Atlantic Striped Bass Conservation Act, which provides for a federal role in conservation in those states which are unwilling to enact necessary conservation measures.

There is ample precedence for federal involvement in facilitating coordinated management programs of living natural resources which transcend state boundaries. Atlantic coastal fisheries are no different. The North Atlantic Salmon Conservation Organization (NASCO), which coordinates the rehabilitation of Atlantic salmon populations between governments throughout their range, is one such case that has developed a management process for a species throughout its range. Another well known case is the federal government's role in waterfowl management. Under the direction of the U.S. Fish and Wildlife Service, the migratory waterfowl treaties with Canada guide management of shared populations of waterfowl, and set overall management and harvest goals to which states must adhere.

The draft Atlantic coast fishery management legislation, while providing for federal intervention in extreme cases,

maintains a much weaker role for federal involvement than are found in these and other programs for managing shared natural resources. Closely patterned after the Atlantic Striped Bass Conservation Act, this legislation provides for an imposition of a federal moratorium only after a majority of the states on the ASMFC recommend such action. The federal government does not establish quotas or regulations, but merely ensures the enforcement of state developed management plans. This has worked well for striped bass, and will work equally well with other fisheries.

Another provision of the Striped Bass Act which has contributed to the successful restoration and management of coastal stocks has been the equal involvement of both the Secretary of the Interior and the Secretary of Commerce. The cooperative relationship between these two agencies has brought the expertise and resources of two major agencies to bear on a single issue. The Department of Commerce provides extensive expertise in marine fisheries and provides some coordination between federal fishery management plans and state management plans for species which cross between coastal waters and the EEZ. Meanwhile the Department of the Interior enhances management through their responsibilities for anadromous fisheries, habitat management in coastal areas and wetlands programs. Not only does the Secretary of the Interior have statutory responsibilities for anadromous species, but through the Sport Fish Restoration Act administers more funds to the states for management of marine and estuarine sport fisheries than any other federal agency. Unfortunately, the draft legislation before us includes the Secretary of the Interior only in an advisory capacity. This will greatly compromise the potential success of the legislation. We strongly urge that the Secretary of the Interior be included in this legislation as an equal federal partner with the Secretary of Commerce.

Although representatives of the Departments of the Interior and Commerce presently serve in an advisory capacity to some of the ASMFC subcommittees, these agencies have no authority in the decision making process. If unified management actions are to be implemented for fish which, at some phase of their life, are subject to exploitation within the EEZ, joint plans must be developed with the approval of federal agencies. The ASMFC has recently begun to coordinate the development of fisheries management plans, such as bluefish and summer flounder, with the Regional Fishery Management Councils. Such actions should be mandatory in the future development of fisheries management plans for migratory species which are subjected to harvest within the EEZ.

Properly instituted management programs can be extremely costly and sometimes controversial. The extent of responsibility of an individual state government for funding and conducting research monitoring, enforcement, and other aspects of sound management programs for particular species should be a function of the degree of exploitation that occurs within that state's

waters. The most equitable manner in which to distribute the cost of interjurisdictional programs should be based on quantitative estimates such as landings, value, or participation in the fishery within each state's waters or within the EEZ. While it is the responsibility of all levels of government to adhere to conservation goals regardless of the status of the fishery in their waters, it is understandable that states would be reluctant to fund programs which have little or no benefit to their commercial or recreational fishermen.

One means of funding natural resource management programs which has proven to be successful and which has generally been accepted by recreational sportsmen has been the implementation of license and extraction fees. Freshwater recreational anglers have long been contributing to fisheries management programs through fishing licenses, and a growing number of coastal states have implemented saltwater licenses or special marine species stamps. These programs, in which recreational anglers support fisheries management programs and thereby enhance the opportunity to pursue fish for noncommercial purposes, have been tremendously successful and have assisted states in obtaining matching funds from the Sport Fish Restoration Program. A number of ASMFC member states are implementing saltwater licensing mechanisms. For a license system to be successful, it must be equitable with fees imposed on other users of the resources and is imperative for states to establish a dedicated fund in which to deposit license revenues. This fund must be earmarked for use only in funding management programs of benefit to recreational fisheries, thereby creating a classical user fee system.

The commercial fishing sector must also contribute to the management of fisheries which they impact through implementation of an extraction fee, similar to those levied on the commercial uses of other common property resources such as timber, minerals, and grazing rights. These fees should also be deposited in a dedicated account to be used only in managing these fisheries. Additionally, a clear distinction should be drawn between commercial and recreational fishermen, possibly through implementation of commercial permits which inhibit or economically discourage the sale of fish by anyone except those deriving primary income as commercial fishermen. With increasing pressure from all citizens to enjoy this common property resource, the days of unlimited, free access to our fisheries have long passed. We need to concentrate on modernizing our outdated approach to managing the fisheries to reflect these changes and better manage our limited resources for the benefit of all.

In conclusion, the Sport Fishing Institute supports the concepts embodied within this draft legislation. We strongly endorse the provisions which provide for a federal moratorium in the case of noncompliance with ASMFC management plans and which require full compliance with the Weakfish Management Plan within six months. We urge the addition of provisions which require all states to enact provisions of the Summer Flounder Management Plan

within six months and to grant the Secretary of the Interior a role equal to the Secretary of Commerce. This draft legislation contains the minimum conservation requirements necessary to improve the management of our fisheries, and we urge this committee to strengthen the legislation with our recommendations.

Testimony of

Jerry F. Schill  
Executive Director  
North Carolina Fisheries Association, Inc.

Presented on  
May 19, 1993  
before the

Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries

THANK YOU MR. CHAIRMAN. I AM JERRY SCHILL, THE EXECUTIVE DIRECTOR OF THE NORTH CAROLINA FISHERIES ASSOCIATION, WHICH IS A TRADE GROUP REPRESENTING THE COMMERCIAL FISHING INDUSTRY IN NORTH CAROLINA. I AM ALSO A MEMBER OF THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL.

THE DISCUSSION DRAFT THAT I RECEIVED TO PREPARE FOR THIS HEARING ON ATLANTIC COAST INTERJURISDICTIONAL FISHERIES MANAGEMENT REFERS FREQUENTLY TO THE MAGNUSON ACT. OUR MAIN CONCERNS WITH BOTH THE MAGNUSON ACT AND THE INTERJURISDICTIONAL BILL ARE VERY SIMILAR.

THE GIST OF AN INTERJURISDICTIONAL BILL IS THAT ALL EFFORTS TO FOSTER COOPERATION AMONG THE STATES HAVE FAILED. WE VEHEMENTLY DISAGREE! IT MIGHT BE SAID THAT ALL EFFORTS HAVE BEEN EXHAUSTED TO FOSTER COOPERATION AMONG THE VARIOUS BUREAUCRATS AND THEIR CORRESPONDING FEDERAL AND STATE AGENCIES. BUT TO EXTEND THAT TO INCLUDE THE SO-CALLED "USER" GROUPS IS AN ABSOLUTE FALLACY.

OUR ORGANIZATION IS 41 YEARS OLD, AND I HAVE SERVED IN MY PRESENT POSITION FOR ALMOST 6 YEARS. THE ATLANTIC STATES MARINE FISHERIES COMMISSION IS 51 YEARS OLD. YET, UNTIL MARCH OF 1992, OUR GROUP NEVER RECEIVED ANY TYPE OF COMMUNICATION THAT WOULD INDICATE WE WERE ON A MAILING LIST.

IN MAY OF 1992, I ATTENDED THE SPRING MEETING OF THE ASMFC AS A VOTING MEMBER BY PROXY. I WAS AMAZED AT THE LACK OF ATTENTION GIVEN TO THEIR "COMPACT", WHICH IS PUBLIC LAW 539 PASSED BY THE 77TH CONGRESS AND AMENDED BY THE 81ST CONGRESS ON AUGUST 19, 1950.

FOR EXAMPLE, ARTICLE VII STATES:

AN ADVISORY COMMITTEE TO BE REPRESENTATIVE OF THE COMMERCIAL FISHERMEN AND THE SALT WATER ANGLERS AND SUCH OTHER INTERESTS OF EACH STATE AS THE COMMISSION DEEMS ADVISABLE SHALL BE ESTABLISHED BY THE COMMISSION AS SOON AS PRACTICABLE FOR THE PURPOSE OF ADVISING THE COMMISSION UPON SUCH RECOMMENDATIONS AS IT MAY DESIRE TO MAKE.

MR. CHAIRMAN, THE ASMFC HAS NO ADVISORY COMMITTEE, YET THE LANGUAGE IN THAT PUBLIC LAW PASSED BY THE CONGRESS STATES THAT THEY SHALL ESTABLISH IT!

ONE OF THE DISCUSSIONS AT LAST YEAR'S MEETING WAS THE SUBJECT OF MEETING ATTENDANCE BY THE LGA'S, OR LEGISLATIVE AND GOVERNOR'S APPOINTEES. I POINTED OUT THE FOLLOWING WHICH AGAIN IS IN THEIR COMPACT:

CONTINUED ABSENCE OF REPRESENTATION OR OF ANY REPRESENTATIVE ON THE COMMISSION FROM ANY STATE PARTY HERETO SHALL BE BROUGHT TO THE ATTENTION OF THE GOVERNOR THEREOF.

IN RESPONSE, I WAS TOLD THAT IT TENDS TO MAKE GOVERNOR'S MAD WHEN THAT WAS DONE, AND THAT COULD AFFECT THE ASMFC'S FUNDING!

MY POINT, MR. CHARIMAN IS TWOFOLD. FIRST, THE ASMFC'S COMPACT IS A PUBLIC LAW PASSED BY THE UNITED STATES CONGRESS. THE LANGUAGE IS WRITTEN TO ASSURE THAT THE "INTERESTS OF EACH STATE" ARE PART OF THE PROCESS. THE TEXT OF JUST THE 2 EXAMPLES ABOVE INCLUDE THE WORD,

SHALL. HOWEVER, FOR WHATEVER REASON, THE ASMFC HAS IGNORED THEM FOR YEARS.

SECOND, INTERJURISDICTIONAL LEGISLATION IS BASED UPON THE PREMISE THAT VARIOUS STATES HAVE NOT WILLINGLY PARTICIPATED IN CERTAIN EFFORTS TO PROTECT FISHERIES RESOURCES. AGAIN, HOW CAN THAT ASSUMPTION BE MADE WHEN THE ACTUAL USERS, BOTH COMMERCIAL AND RECREATIONAL, HAVE NOT BEEN A PART OF THIS PROCESS?

FOR YEARS, THE ASMFC HAS BEEN A STEALTH ORGANIZATION, TOTALLY OUT OF TOUCH WITH "REAL" FISHERMEN. THEY HAVE HAD MEETINGS AT OUT-OF-THE-WAY OR OUT-OF-POCKETBOOK LOCATIONS THAT FISHERMEN SIMPLY CANNOT ATTEND.

OTHER LANGUAGE IN THE DISCUSSION DRAFT CITES THE CONSULTATION WITH APPROPRIATE COUNCILS. IN OUR CASE THAT WOULD MEAN THE MID ATLANTIC OR SOUTH ATLANTIC COUNCIL. THE MID ATLANTIC COUNCIL WHICH HAS ONLY 3 OF 19 VOTING MEMBERS WHO REPRESENT COMMERCIAL INTERESTS, OR THE SOUTH ATLANTIC COUNCIL WHICH HAS 2 OF 13!

I REALIZE THAT I'M REFERRING NOW TO THE MAGNUSON ACT. HOWEVER, BECAUSE INTERJURISDICTIONAL FISHERIES MANAGEMENT AND MAGNUSON ARE THE PRIMARY COMPONENTS OF THIS BILL, YOU CANNOT DISCUSS ONE WITHOUT THE OTHER.

COOPERATION AMONG THE STATES IS ABSOLUTELY ESSENTIAL FOR

INTERJURISDICTIONAL FISHERIES. BUT TO REWARD THE ASMFC BECAUSE OF THEIR SHORTCOMINGS IS LUDICROUS AT BEST! YES, THE DIALOGUE BETWEEN THE ASMFC AND USER GROUPS HAS IMPROVED MANY TIMES OVER SINCE JACK DUNNIGAN HAS ARRIVED AS EXECUTIVE DIRECTOR. BUT UNLESS AND UNTIL THE ASMFC IS ABIDING BY ITS OWN COMPACT WHICH WAS PASSED BY THE UNITED STATES CONGRESS, THIS ATTEMPT AT FOSTERING COOPERATION WILL FAIL MISERABLY!

IN CLOSING MR. CHAIRMAN, I ASK YOU, HOW FAIR IS TO DEMAND THAT FISHERMEN ABIDE BY THE LAWS AND REGULATIONS OF THE LAND, WHEN THEIR VERY GOVERNMENT THUMBS THEIR NOSES AT THOSE SAME LAWS? KNOWING THAT THE MAGNUSON ACT CALLS FOR THE SECRETARY TO MAKE COUNCIL APPOINTMENTS "TO ENSURE A FAIR APPORTIONMENT ..... OF THE ACTIVE PARTICIPANTS", BUT FLAGRANTLY VIOLATING THE LAW WHEN MAKING THOSE APPOINTMENTS.

OR THE ASMFC, KNOWING FULL WELL THAT IT IS VIOLATING ITS OWN COMPACT THAT CALLS FOR ACTIVE PARTICIPATION BY ALL USER GROUPS, THEN USES ITS OWN FAILING IN THIS REGARD, TO TRY TO CONVINCE YOU THAT THOSE SAME PARTIES ARE NOT COOPERATING?

MR. CHAIRMAN, MY FOLKS MAKE THEIR LIVING ON THESE RESOURCES, AS HAVE THEIR ANCESTORS FOR GENERATIONS. THEIR SOLE PURPOSE IN WANTING FISHERIES MANAGEMENT TO WORK MAY BE PRAGMATIC, BUT IT IS WORKABLE IF THEY ARE ALLOWED TO PARTICIPATE IN THE PROCESS.

LET'S NOT WASTE PRECIOUS TIME AND MONEY BUILDING BUREAUCRATIC EMPIRES THAT WILL DO NOTHING TO HELP FISHERIES MANAGEMENT. I APPEAL TO YOU TO FORCE THESE AGENCIES TO ABIDE BY THE LAWS THAT YOU'VE ALREADY PASSED SO THAT THE ACTUAL USERS CAN PARTICIPATE:

THROUGH COUNCIL REPRESENTATION AND THROUGH AN ADVISORY COMMITTEE ON THE ASMFC.

AFTER THEY FULFILL CONGRESSIONAL MANDATES THESE EXTRA MEASURES SHOULD BE CONSIDERED. BUT I DOUBT VERY MUCH THAT STRONGER MEASURES WILL BE NEEDED IF ALL GROUPS ARE BROUGHT INTO THE PROCESS AS WAS INTENDED BY CONGRESS IN THE FIRST PLACE.

THANK YOU.

## Statement of

William J. Goldsborough, Fisheries Scientist  
Chesapeake Bay Foundation

on

The Atlantic Coastal Fisheries  
Cooperative Management Act of 1993

before the

Subcommittee on Fisheries Management  
Committee on Merchant Marine and Fisheries  
U.S. House of Representatives

May 19, 1993

Chairman Manton, members of the Subcommittee, my name is Bill Goldsborough, and I am the Fisheries Program Chief with the Chesapeake Bay Foundation, a non-profit conservation organization with 85,000 members throughout the Mid-Atlantic area. Thank-you for the invitation to address the Subcommittee on what we consider to be the most important legislation this year affecting inshore stocks of migratory fish.

The mission of the Chesapeake Bay Foundation is to "Save the Bay." While this catchy phrase means many things to many people, to us the clearest indicator of success in this endeavor is the restoration of the Bay's living resources. In support of this goal the Foundation has devoted substantial resources to the preservation of aquatic habitat. But it has become clear to us that all the efforts underway to restore habitat cannot maintain fish populations if they are not accompanied by efforts to conserve fish.

Thus, we have become an advocate for effective fisheries management, and we have found that this takes us far beyond the boundaries of Chesapeake Bay. Virtually all of the important fisheries in the Bay depend on fish stocks that are shared by other coastal states, in many cases by a dozen or more. Not only the striped bass, whose migratory ways have been well appreciated by Congress, but also weakfish, summer flounder, American shad, red drum, river herring and many more species move annually up and down the coast and support a variety of fisheries along the way.

Those of us in Chesapeake Bay cannot manage these fisheries. Neither can those whose interests lie in Narragansett Bay or Delaware Bay or Long Island or Pamlico Sounds. All Atlantic Coast jurisdictions share this problem: they must work together to manage and maintain these joint resources. This need for cooperation was recognized fifty years ago when Congress created the Atlantic States Marine Fisheries Commission (ASMFC). While the Commission has become an important forum for the development of cooperative management plans, the states have a poor record in implementing these plans. The result has been a general decline in our coastal fishery resources.

The best illustration of this phenomenon from the point of view of Chesapeake Bay is the American shad. While it once supported the most valuable commercial finfishery in the Bay and a vibrant recreational fishery, the American shad is severely depleted in the Bay and supports essentially no fishing now. In Maryland waters a total moratorium has been in place for thirteen years with almost nothing to show for it. In contrast, after a five year moratorium on striped bass, a similarly important fishery is rapidly being rebuilt.

The key difference between these species lies in fisheries management. Both species are the subject of ASMFC management

plans, but only the striped bass plan was implemented by all coastal states. When Maryland closed its shad fisheries in 1980, new commercial fisheries were developing in the ocean to take their place. These fisheries, known as "intercept" fisheries because they capture shad on their way to their spawning rivers, are now found in most Atlantic Coast states in spite of the fact that they are discouraged by the ASMFC shad plan. The net effect is that an individual state is helpless to restore its traditional inshore fisheries.

In contrast, because of uniform compliance with its management plan, the striped bass is now well on its way to recovery and, even under strict harvest limits, is providing a much needed economic shot in the arm to our commercial and recreational fisheries. This success is a direct result of the Atlantic Striped Bass Conservation Act of 1984 which provided an incentive for states' compliance with coastal management plans. This relatively simple approach has proven itself, and it is time to apply it to other species.

The legislation before you has evolved from the striped bass experience as well as from two years of deliberations on similar bills and countless discussions among interested parties. This bill, the Atlantic Coastal Fisheries Cooperative Management Act of 1993, is well developed and may only need minimal refinement. It has our full support in concept, and we urge swift passage. As you deliberate specific parts of the bill please consider the following points which are priorities from our point of view:

- 1) The time frame for implementation by the states of ASMFC plans should be as short as practicable; we support the one year interval in the current version.
- 2) Added urgency for implementation should be placed on summer flounder as well as weakfish.
- 3) The Secretarial review of non-compliance should be done jointly by the Secretaries of Commerce and Interior.

That concludes my remarks. Thank-you for the opportunity to comment on this very important legislation.

P.O. Box 702  
 West Hyannisport, MA 02672  
 (508) 420-1662  
 18 May 1993

The Honorable Gerry E. Studds  
 Chairman  
 Committee on Merchant Marine and Fisheries  
 U.S. House of Representatives  
 544 House Annex II  
 Washington, DC 20515-6230

Sir:

Thank you for giving me the opportunity to review and comment on the draft legislation entitled "The Atlantic Coastal Fisheries Cooperative Management Act of 1993".

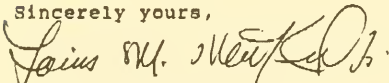
I am sure that this bill will provide and guarantee a more equitable means of managing the fisheries along the Atlantic Coast and will encourage the affected states to assist one another in developing successful fisheries management plans.

The one change that I recommend is to add the word **MONITORING**. I believe that it would be prudent to add monitoring in Section 2 and urge you to do so because I believe that monitoring insures continued scrutiny of any fisheries management plan that is developed and implemented by the Atlantic States Marine Fisheries Commission. I also believe that its (monitoring) inclusion in the language will insure that funding will be made available in addition to the other activities so designated in Section 2.

I fully support the proposed legislation and recommend that The Atlantic Coastal Fisheries Cooperative Management Act of 1993 be given special consideration and a favorable recommendation for passage by the Committee.

Again, thank you for giving me the opportunity to comment on your proposal and if I can be of further service to you, please do not hesitate to call upon me.

Sincerely yours,



Louis M. MacKeil, Jr.

Member, National Marine Fisheries Service Marine Recreational  
 Fisheries Steering Committee for the Northeast Region  
 President, Cape Cod Salties Sportfishing Club  
 Delegate to and Correspondence Secretary for the Barnstable  
 County League of Sportsman's Clubs



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## **FAX TRANSMISSION**

**1 of 1 Pages**

June 25, 1993

The Honorable Congressman Gerry E. Studds, Chairman  
Merchant Marine & Fisheries Committee  
House Office Bldg.  
Washington, DC 20510

Dear Congressman Studds:

Today I am writing you as Chairman of the Committee in regards to H.R. 2134, Atlantic Coastal Fisheries Co-op Management Act of 1993.

I feel this bill leaves many questions unanswered, and raises other questions that I feel should be addressed. This important Bill should go through the proper Full process with mark-up and discussion. We in the Fishing Industry wish to raise these concerns through the Staff at NFI. Our original concerns were not addressed after the single Hearing held in May of 1993.

I hereby request that this bill does not by-pass the process, and give the fishing community the time to address our concerns.

I thank you Mr. Chairman and the other Members of the Committee in allowing us in the fishing community to view or concerns, and let us assist you and your staff in pending legislation.

Yours,

*Lawrence M. Sylvia*  
Lawrence M. Sylvia, CFO  
FAMILY FISHERIES, LTD  
F & S Fisheries, Inc.

LMS/l

cc: NFI (Rick Marks)

cc: Congressmen Manton, Frank, Hughes, Saxton, Reed  
Committee Staff Members

Trade Members of:

• National Fisheries Institute • Blue Water Fishermen's Association • New England Fisheries Development Association

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Hatteras - Ocracoke Auxiliary  
 North Carolina Fisheries Association  
 P.O. Box 183  
 Buxton, N.C. 27920  
 May 26, 1993

Congressman Thomas J. Manton  
 U.S. House of Representatives  
 Committee on Merchant Marine and Fisheries  
 Room 1334, Longworth House Office Bldg.  
 Washington, D.C. 20515-6230

Dear Congressman Manton:

The Hatteras - Ocracoke Auxiliary of the North Carolina Fisheries Association is deeply concerned about the creation of the Atlantic Coastal Fisheries Cooperative Management Act.

Our organization represents commercial fishing families on two islands of North Carolina's Outer Banks. Commercial fishing operations here are small family-owned and operated businesses. Our boats are small vessels with, typically, a two-man crew although it is not uncommon for many of our owners to fish singlehandedly. Most of our boats are not large or fast enough to venture off-shore, especially considering that weather conditions here change frequently and abruptly. Traditionally our fishermen have relied on in-shore species, such as weakfish and bluefish.

Our commercial fishing community is not opposed to the sensible regulation of our fishery resources. In 1992 the North Carolina Division of Marine Fisheries implemented a number of new regulations for our weakfish fishery. We have complied with those regulations. We believe that the North Carolina Division of Marine Fisheries should be credited with developing fishery management plans that take into consideration both the protection of our marine resources and the continuation of the commercial industry.

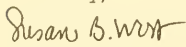
In contrast, the Atlantic States Marine Fisheries Commission has, historically, ignored the economic impact of its actions. The Striped Bass Conservation Act of 1984 devastated many North Carolina commercial fishermen and their families. It should be possible to develop legislation that protects our resources but also protects our commercial fishing families. A closure of the weakfish fishery during our prime fishing season would be devastating to not only our fleet but to our entire community. There seems to be a lack of a sound scientific basis for dictating moratoriums or closures in the fishery.

We have enclosed a copy of a description of our area's sink net fleet and our concerns regarding an expansion of the Atlantic States Marine Fisheries Commission's authority. We prepared this information for Congressman Lancaster several months ago.

We ask that you respect our interests and concerns in developing legislation to protect not only our marine resources but also our commercial fishing families. Please call me (919-995-4131) if you wish to discuss this matter.

Thank you.

Sincerely,

  
 Susan B. West  
 President

## THE OUTER BANKS SINK NET FLEET

Sink nets are tended gill nets fished and retrieved the same day. Sink nets are weighted to fish just above the bottom. Sink nets are set anywhere from just beyond the surf zone's outer bars to depths of 15 to 20 fathoms. (Ross, 1989)

Sink netting began in the 1920s at Hatteras, N.C. In the 1930s, the sink net fleet consisted of 30 to 35 boats fishing out of Hatteras. The 1950s and 1960s saw little sink netting due to the lack of available weakfish and croaker. Sink netting off Cape Hatteras became more popular in the late 1970s due to the increased availability of weakfish and bluefish and due to the availability of hydraulically powered net reels. (Ross, 1989)

The sink net fishery on the Outer Banks is most active from December through April. During those months, sink nets are utilized to harvest weakfish, bluefish, dogfish, spot and croaker. The sink net fleet fishes every day possible during this period. It is important to remember, however, that weather conditions at that time of the year severely limit the activity of the fleet; it is not unusual for entire weeks to be lost due to adverse weather conditions, as was the case just recently with our March 13th storm.

The sink net fleet consists primarily of sole proprietors. These fishing operations typically have a two man crew but it is not atypical for the proprietor to fish singlehandedly. The boats that participate in the sink net fleet are not large vessels. The length of the sink net boats average from 30 to 42 feet; however, boats under 30 feet long also participate. (Oden & Whitaker, 1993)

The value of the weakfish fishery is critical to these small fishing operations. For the September 1990 - April 1991 season, the ex-vessel value of weakfish landed by sink nets in Dare County was \$490,980. (DMF) The economic multiplier used by many economists to estimate the value that a landed fisheries product has to the gross national product of a region is eight. Using that multiplier of eight, the value of weakfish landed by sink nets in Dare County for the 1990-91 season was \$3,927,840.

## FISHERY MANAGEMENT PLAN FOR WEAKFISH

In 1985, the Atlantic States Marine Fisheries Commission published its Fishery Management Plan for Weakfish. The goal of the management plan is "to perpetuate the weakfish resource in fishable abundance throughout its range and generate the greatest economic and social benefits from its commercial and recreational harvest and utilization over time."

The plan repeatedly mentions that "tremendous fluctuations in the apparent levels of abundance of weakfish have been reported throughout the history of the fishery." "Historically, weakfish landings have been highly variable. Reported commercial landings of weakfish have fluctuated between <1 and 19,000 metric tons from 1880 to 1984. Peaks in landings occurred in the early 1900s, the early 1930s, the mid-1940s, and in 1980. Periods of high landings have generally been followed by sudden and

precipitous declines in catch, the causes of which are not known." (Mercer, 1985)

In 1991, the Atlantic States Marine Fisheries Commission presented the Weakfish Fishery Management Plan Amendment #1. This Amendment determined that the weakfish stock is overfished and recommended management measures to restore the stock. The Amendment recommends that states be given flexibility in achieving reductions in exploitation by using a combination of:

- minimum size limits (with appropriate mesh restriction by gear)
- season and area closures for the commercial fisheries
- size/bag limits for the recreational fisheries
- bycatch mortality reduction in non-directed fisheries (principally the South Atlantic shrimp fisheries)

#### MINIMUM SIZE LIMITS (WITH APPROPRIATE MESH RESTRICTIONS BY GEAR)

Minimum size limits are implemented to reduce the harvest of small weakfish. Mesh restrictions allow fish below the minimum legal size limit to escape by passing through the mesh during the fishing operation.

In the 1985 Weakfish Fishery Management Plan, the Atlantic States Marine Fisheries Commission reported research that shows that the mean length of northern weakfish were greater than that of southern weakfish. "The mean lengths at age of northern weakfish were greater than southern weakfish and maximum mean lengths at age were also greater in the north and became progressively smaller towards the south." (Mercer, 1985)

In 1992, the North Carolina Division of Marine Fisheries mandated a 10" TL (total length) minimum size limit for weakfish. In addition, the DMF also implemented a Weakfish Harvest Permit requirement for the taking of weakfish by gillnets, flynets and beach seines in the Atlantic Ocean. Dr. William T. Hogarth, Director of the North Carolina Division of Marine Fisheries, indicated that compliance with the 10" minimum size has been very good in the sink net fishery. (telephone conversation, 3-01-93)

Gill nets are implicitly a very size selective gear. "The imposition of size limits will be most effective in the sink net fleet in terms of escapement of undersized weakfish. Since all fish are handled, undersized fish are quickly released and generally in survivable shape (at least 75% based on personal observation, Ross, 1992) due to the cold water temperatures and minimal damage to the fish." (Ross, 1992)

Although it isn't pertinent to the sink net fishery, it is important to note that in 1992 the NC DMF also implemented mesh restrictions on flynets used in harvesting weakfish in the Atlantic Ocean. Flynets must have tailbags with a minimum stretched mesh length of 3 inches hung on the square and 3½ inches hung on a diamond.

Mesh restrictions have not been imposed on the sink net fishery; the fleet automatically increases mesh size with the imposition of a larger minimum size for weakfish. The fleet went to a larger mesh size voluntarily because the larger size reduces the number of undersized weakfish caught

and, thereby, reduces the amount of time spent picking undersized fish that can't be marketed.

The implementation of mesh size restrictions on the sink net fishery must take into consideration that the sink net fleet on the Outer Banks doesn't target weakfish exclusively. The sink net fleet is a versatile fishery and, when conditions warrant, some of the fleet fish for other species, such as bluefish, dogfish, sea mullet, spot and croaker. The versatility of the sink net fleet has, in the past, assured its continuation, but that same versatility also means that the fleet will be affected by management plans for many species.

Fishermen on the Outer Banks indicate that the size of weakfish they are seeing are larger than in the past few years. Jeff Ross of the NC DMF explained that the DMF samples at least four catches of weakfish landed by the Outer Banks sink net fleet every week but that the data on the 1992-93 season will not be compiled and analyzed until the fall of 1993. Ross felt that the observations of the fishermen could well be true but he also cautioned that several years of data indicating larger sizes are necessary to indicate a trend. (telephone conversation, 3-03-93)

#### SEASON AND AREA CLOSURES FOR THE COMMERCIAL FISHERIES

Closures are used to effect a reduction in effort which, in turn, reduces the rate of fishing mortality on fully recruited ages.

The sink net fleet on the Outer Banks has, in effect, reduced effort in the weakfish fishery without the imposition of closures. This voluntary reduction in effort evolved when some crews decided not to target weakfish and determined that they would target dogfish, bluefish, king mackerel or tuna, among others.

In 1991, a market for dogfish was established on the Outer Banks for the first time. Prior to that time, dogfish were considered mainly a nuisance. However, when a market was established to export dogfish to England, some crews chose to target dogfish, which are extremely abundant and which command a consistent price. The development of this market, for a previously under-utilized species, guarantees a reduction in effort for weakfish from the levels of the late 1980s.

Jeff Ross of the NC DMF reported that the Outer Banks sink net fleet reduced effort on weakfish by 25% between the 1989-90 and 1990-91 seasons and nearly 65% during the 1991-92 fishing season. (Ross, 1992) (Oden & Whitaker, 1993)

Seasonal or area closures will impose hardships on the Outer Banks sink net fleet. The fleet consists of small vessels with, typically, a two man crew. Many of these boats are not large enough to venture far out to sea in search of off-shore species. Many of these boats are not fast enough to safely travel far distances in an area where weather conditions change abruptly.

# BYCATCH MORTALITY REDUCTION IN ~~SEA~~-DIRECTED FISHERIES (PRINCIPALLY THE SOUTH ATLANTIC SHRIMP FISHERIES)

In October 1992, the North Carolina Division of Marine Fisheries issued a proclamation requiring the installation of Finfish Excluder Devices (FEDs) on shrimp trawl tailbags. North Carolina was the first state on the East Coast to require the use of FEDs.

"Tests aboard a commercial trawler in Pamlico Sound last spring showed finfish reduction of 54 to 70 percent. Commercial fishermen have reported finfish reduction rates ranging from 50 percent to more than 80 percent with no loss of shrimp." (Marine Advisory News, Fall 1992)

## THE ATLANTIC STATES MARINE FISHERIES COMMISSION

The Atlantic States Marine Fisheries Commission is made up of representatives from the fifteen Atlantic coastal states (Maine through Florida). Each state has three representatives: the Director of Fisheries, a Governor's appointee and a Legislative appointee.

The ASMFC has a "Compact" that directs its organization. Article X of that Compact reads: "Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof." At the ASMFC's meeting in Washington, D.C. in the spring of 1992, there was a discussion of the poor attendance of the legislative and governors' appointees. Jerry Schill of the North Carolina Fisheries Association attended that meeting and he was informed that the reason poor attendance is not always brought to a governor's attention is that the ASMFC feared that this would anger some governors and, in turn, would hurt the Commission's funding.

Article VII of the Compact states that "An Advisory Committee to be representative of the commercial fishermen and the salt water angler and such other interests of each state as the Commission deems advisable shall be established by the Commission..." The ASMFC does have an Advisory Committee but it is comprised of biologists. Dr. William T. Hogarth, the Vice-Chairman of the ASMFC recently said, "I think that the ASMFC is a good idea, but by not having any regulatory power for so many years, you get sort of lax in the way you conduct business." (Biro, 1992)

The commercial fishermen have grave concerns about increasing the authority of the ASMFC. North Carolina fishermen fear that any increase in the authority of the ASMFC will repeat the conditions that developed when Congress passed the 1984 Atlantic Striped Bass Conservation Act and required states to comply with the Commission's striped bass management plan or face a moratorium in the fishery. For North Carolina fishermen that meant that the striped bass fishery was closed.

The concern of the commercial fishing industry stems from the fact that the ASMFC doesn't communicate with the industry. The Commission appears to limit its communication to other bureaucrats. The fact that the Commission's Advisory Panel is not seated with members of the commercial fishing industry is particularly troublesome. "North Carolina's Hogarth says fishermen have valid concerns. The commission does not consider economic impacts of its actions, he says." (Biro, 1992)

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Hatteras Island Fishermen who assisted in the Preparation of this Information:

Paul Dunn  
Jeff Oden  
Rich Struminski  
Rob West  
Rom Whitaker

## NORTH CAROLINA SINK NET BOATS (NORTHERN REGION) 1988 - 1993

Information compiled by Jeff Oden and Rom Whitaker

Key: T = Trout  
 B = Big Bluefish  
 D = Dogfish  
 K = King Mackerel (Hook and Line)  
 C = Crabs  
 S = Shark (Longline)

The following information shows the species targeted by boats active in the Outer Banks sink net fishery from 1988 through 1993.

LENGTH	BOAT NAME	88-89	89-90	90-91	91-92	92-93
42'	Diamond Julie	TB	TB	TD	DB	S
42'	Little Sammy	T	T	D	D	D
42'	Hopeful	TB	TB	BD	BD	BT
36'	Captain Jason	T	T	D	D	BT
36'	Sugar Creek	TB	TB	TB	DB	D
36'	Captain Jeremy	T	TB	TB	TB	D
36'	Croaker	T	T	T	D	D
36'	Genesis	T	T	T	D	D
44'	Morning Star	T	T	RETIRED		
34'	Connie Sue		T	TB	BD	D
42'	Captain B	T	TB	BD	BD	SB
35'	Tar Baby	T	TB	BD	BD	SB
42'	Miss Michelle	T	TB	BD	BD	D
40'	Heather Tracy	T	TB	BD	BD	S
40'	Apparition	T	T	K	K	K
35'	Cash	T	T	T	D	D
42'	Handful	T	T	TD	D	D
34'	Heather Lynn	T	T	TB	DB	D
40'	Bottom Line	T	TB	DB	DB	BD
34'	Tiffany	T	TB	TD	D	T
42'	Amy Lee	T	T	DB	DB	D
36'	Early Shay	T	T	DB	D	TD
35'	Lady Dare	T	T	DB	D	S
42'	Sea Whisper	T	T	DB	D	D
35'	Sandy D	T	T	DB	DB	?
35'	Miss Catherine	T	T	S	S	SOLD
42'	Foxy Lady	T	T	DB	DB	D
34'	Fish Wish	T	T	TD	D	D
28'	No Problem	T	T	TD	D	D
42'	Rebait	T	T	TD	D	T
32'	Islander	T	T	T	T	?
37'	Jackie B	T	T	TB	D	D
42'	Windy Gale	T	T	T	T	T
36'	Bout Time	T	T	T	T	T
30'	Pol Kat	T	T	T	T	T
42'	Ranger	T	T	T	D	D
44'	Lori Mel	T	T	T	D	D
42'	Miss Megan	T	T	T	D	D
32'	Bonita	T	T	T	T	T
35'	Big Eye	T	T	T	RETIRED	
44'	Captain Squid	T	T	TB	D	D

LENGTH	BOAT NAME	88-89	89-90	90-91	91-92	92-93
35'	Hatteras Blue	T	T	T	T	T
38'	Che Che	T	T	T	T	T
32'	Kinnakeeter	T	T	T	T	D
31'	Nancy K	T	T	T	T	T
31'	Country Time	T	T	K	K	D
42'	Fin Quest	T	T	T	T	T
42'	Miss Pepsi	T	T	TB	TB	TB
34'	Devocean	T	T	T	T	T
35'	Miss Benaving	T	T	T	D	D
30'	Catch One	T	T	T	T	T
46'	Catch Em	T	T	T	D	D
28'	Miss Achsuh	T	T	T	D	D
32'	Fish Hunter	T	T	T	D	D
30'	Sea Hawk	T	T	T	T	D
42'	Little Clam	T	T	T	D	S
40'	Sea Bound	T	T	T	T	TD
41'	Sea Bear	T	T	T	T	T
25'	No Name	T	T	T	T	
31'	Lookout Lady	T	T	T	T	T
42'	Raven	T	T	T	D	D
31'	Diamond Girl	T	T	T	T	T
42'	Safari	T	T	T	T	T
30'	Donna Lynn	T	T	T	T	D
35'	Sherwater	T	T	T	T	D
28'	Play Pen	T	T	T	D	T
39'	Mamacita	T	T	T	D	D
33'	Apache	T	T	T	T	T
31'	Shadow	T	T	K	K	K
32'	Miss Geraldine	T	T	T	T	T
44'	Sizzler	T	T	T	D	T
28'	Wayne Miller	T	T	RETIRED		C
25'	Erwin O'Neal	T	T	T	D	T
35'	Bad News	T	T	T	D	TB
32'	Servant	T	T	T	T	T
		<u>100%</u>	<u>100%</u>	<u>68%</u>	<u>32%</u>	<u>    </u>



## Sport Fishing Institute

1010 Massachusetts Ave., N.W., Washington, D.C. 20001 (202) 898-0770, Fax (202) 371-2085

June 4, 1993

Thomas J. Manton  
Chairman  
Subcommittee on Fisheries Management  
1334 Longworth House Office Building  
Washington, D.C. 20515-6230

Dear Mr. Manton:

I appreciate the opportunity to testify before the Subcommittee on Fisheries Management during the hearing on H.R. 2134. The continued growth and vitality of the sport fishing industry is dependent on healthy and well managed fish stocks, and passage of H.R. 2134 will facilitate these better management programs.

In your letter of May 19th, you requested that I respond to two questions which arose from the hearing. My responses are addressed separately below.

1. H.R. 2134 would vest the Commission with vast new authority. Was any thought given to vesting this authority in the Councils established under the Magnuson Fishery Conservation and Management Act?

While H.R. 2134 does not vest any new regulatory authority in the Commission, it does provide the states, acting through the Commission, with an enforcement mechanism for jointly developed management plans. The states have been developing recommended joint management measures since the forming of the Commission 50 years ago. This legislation would simply ensure that the states implement these measures in order to ensure well managed and healthy stocks of fish.

This identical mechanism was embodied in the tremendously successful Atlantic Striped Bass Conservation Act. Passage of this act had almost immediate results. A mere seven years after the Act was implemented, we are now seeing striped bass populations rebound to levels that have not been seen for almost two decades. Although the striped bass recovery process continues, we are hopeful that they will soon recover to a level which will sustain a vibrant recreational fishing industry. Upon enactment of H.R. 2134, we anticipate that similar results will be realized with other interjurisdictional species, assuming that the states are committed to developing meaningful fishery management plans.

*The National Non-Profit Fish Conservation Organization*

Mr. Thomas Manton  
June 4, 1993  
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Management of fisheries within the three mile limit is a state responsibility. Abrogating this responsibility to the federal government through the Council system would be a severe infringement of the states right to manage their fisheries. Species for which the Commission has drafted plans are found primarily within 3 miles of the shore, and generally occur at lesser levels in federal waters.

Additionally, the Council system, as currently structured, has proven to be cumbersome, time consuming, and often ineffective in preventing the decline of marine species. According to a 1991 report by the National Marine Fisheries Service, 75 percent of recreational and commercial finfish species in the northeast Atlantic continue to be overfished, even with the Council system in place. All but two of the species listed in the attached table are covered under a Council adopted fishery management plan (either Mid-Atlantic or New England Council), yet they continue to be harvested in excess of their capacity (it should be noted that all but one of the plans were implemented in 1986 or earlier. Compare the success of these federal plans to the success of the Atlantic Striped Bass Plan that began to be enforced by the states only one year earlier). At this point in time, and until the Council systems begins operating more efficiently, fisheries management programs have a better chance of being developed by the states working in concert with each other as opposed to management by the federal fishery management process.

2. Mr. Schill raises a number of complaints about the Commission and the current management process. Would anyone like to respond.

The primary concern expressed in Mr. Schill's testimony regarding this legislation appears to be the Commission's inadequate job of soliciting and receiving public input. Public input into the development of fishery management plans is vital to the success and acceptance of these plans and should be a part of the planning process.

The states, through the Commission, develop broad coastwide fishery management plans which are intended to protect the biological condition of the resources on a coastal basis. These plans do not allocate resources among user groups or dictate specific details of state implementation plans. Each state is responsible for developing and implementing state-specific plans and guidelines which conform to the coastwide plan. Many of the coastal states have citizen advisory groups which provide input to the state fishery management agency, which then should convey these views to the Commission prior to, and during the development of,

Mr. Thomas J. Manton  
June 4, 1993  
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the Commission's coastwide plan. Additionally, each state has implemented its own public hearing and input process to develop and implement state-specific plans, at which time concerns that are specific to management and allocation of the resources in individual state waters are addressed.

The Commission Compact incorporates some measure of public input by providing for one commissioner from each state that represents the state legislature (or their appointee) and one that is "a citizen who shall have knowledge of the interest in the marine fisheries problem" and is appointed by the governor. Although these members are appointed, in the past they have not received financial assistance to cover the costs of attending the various Commission functions and have therefore not been integrally involved with plan development.

The Commission recently has made substantial improvements to correct this situation. Citizen appointees and legislative appointees are gaining membership on some of the key committees and receiving financial assistance to attend meetings. At the Spring 1993 Annual Meeting of the Commission, a proposal was adopted to begin the formal establishment of a citizen input group.

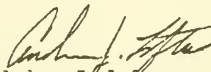
The Sport Fishing Institute advocates increased citizen involvement at all stages of fishery management plan development. However, we do not view the failure of the Commission plans to be attributable solely to the Commission's neglect of "foster(ing) cooperation among the states" as Mr. Schill contends. Commission plans have failed because, in most cases, states have not had the political will to implement restrictive management measures which may cause their fishermen to sacrifice in order to provide for a more stable stock along the entire coast. It is this parochial view of management which has often caused a spiraling effect, where each state's citizens are not willing to sacrifice when those in neighboring states are not.

We urge the Commission to adopt policies and procedures which will provide for greater access to Commission procedures for the general public. Their recent action to formally establish a public input group is a step in the right direction. However, this group must be provided with resources which allow them to effectively interact and must not become a "formality" for appearances sake. States must be encouraged to adopt public forums which allow ordinary citizens an opportunity to air their concerns about fishery management plans to their state's commissioners to the ASMFC.

Mr. Thomas J. Manton  
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In conclusion, as outlined in the testimony of the Sport Fishing Institute, with the inclusion of strengthening amendments, H.R. 2134 can provide for more effective and efficient management of coastal fishery resources. We appreciate your concern for the resources and for your sponsorship of this extremely important piece of conservation legislation. If there is anything that the Sport Fishing Institute can do to assist in its passage, please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Andrew J. Loftus". The signature is fluid and cursive, with the first name "Andrew" and last name "Loftus" clearly distinguishable.

Andrew J. Loftus  
Research Specialist

## STATUS OF RECREATIONAL FISH SPECIES IN THE NORTHEAST U.S. FOR 1991

Species (Stocks)	Importance		Plan Date	F <sub>max</sub>	F <sub>1990</sub>	Exploitation Status
	to Rec. Fishing					
American Shad	Major	NA	UK	UK	UK	UK
Atlantic Cod (GB)	Major	1986	.27	.56	Over	Over
Atlantic Cod (GOM)	Major	1986	.27	.94	Over	Over
Atlantic Salmon	Major	UK	UK	.90	Over	Over
Black Sea Bass	Major	NA	.30	UK	Fully	Fully
Bluefish	Major	1989	.27	UK	Fully	Fully
Scup	Major	NA	.35	.35	Over	Over
Striped Bass	Major	1981	UK	UK	Protected	Protected
Summer Flounder	Major	1988	.23	1.40	Over	Over
Wntr Flounder (GOM)	Major	1986	UK	UK	Over	Over
Wntr Flounder (MA)	Signif.	1986	UK	UK	Over	Over
Atlantic Mackerel	Mod.	1978	.96	.02	Under	Under
Pollock	Minor	1986	.57	UK	Over	Over
Red Hake (GB-MA)	Minor	1986	2.00	UK	Under	Under
River Herring	Minor	1978	UK	UK	UK	UK
Silver Hake (GB-MA)	Minor	1986	UK	.42	Fully	Fully

MA = Mid-Atlantic

NA = Not Applicable

Signif. = Significant

GB = Georges Bank

UK = Unknown

Mod. = Moderate

GOM = Gulf of Maine

Source: "Status of Fishery Resources off the Northeastern U.S. for 1991." NOAA  
Technical Memorandum NMFS-F/NEC/88.

# EAST COAST FISHERIES FOUNDATION, INC.

July 21, 1993

COPY

Congressman Thomas Manton, Chairman  
Subcommittee on  
Fisheries Management  
513 Ford HOB  
Washington DC 20515

Dear Mr. Manton:

The East Coast Fisheries Foundation is a multi-state, multi-sector organization of commercial fisheries interests. Among our members are fishing vessels and their crews, co-ops, processors and packers, and support industries in New York, New Jersey, Connecticut and Rhode Island.

We are concerned about the legislation which would grant substantially more authority to the Atlantic States Marine Fisheries Commission than it presently has, H.R. 2134.

The will of the Congress was clearly written in the Magnuson Act, which provides opportunity for the public to participate in the regulatory process. This is not true, unfortunately, of ASMFC. Even if an advisory body is added, the Commission's meetings and process are usually remote, both physically and operationally, from commercial and recreational fishermen. The expense and time to participate is usually prohibitive. This, unfortunately, means that the Commission may act with authority but not accountability, and that it has power without responsibility.

The Commission was created some 45 years ago because fish cross boundaries, and regulations were sometimes in conflict. But in 1976, Congress created the Management Councils under Magnuson, and they have the statutory power to preempt the authority of any state whose management actions are damaging to the resource. That capability would seem enough to make certain that a state is "in compliance."

The Councils, with their diverse makeup, recognize that fish and fisheries are quite different along the coast, and make accommodations. Public participation is a critical part of that process, and ASMFC simply does not provide a comparable venue.

The Commission, on the other hand, seems to occasionally engage in a type of "horse trading," because the members' constituents are the residents of their home states. With the Management Councils, the constituent is the resource and the entire spectrum of users and interests. That principle is even spelled out in the responsibilities of Council members.

In general, I hope that the Congress will stand by its Magnuson Act intent, and recognize that the Atlantic States Marine Fisheries Commission may perform an important advisory function for the Councils; that the ASMFC should be a mechanism to exchange scientific information and facilitate co-ordination among the states, primarily as an adjunct of the Councils; but that the ASMFC is not an appropriate regulating body. In fact, it may create more conflict than it resolves, and should only have the authority to act in a case where the Councils have not.

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With specific regard to H.R. 2134, there is a real potential for conflict and irrationality.


1. Will states be unfairly punished for the transgressions of other states? This is certainly possible. Suppose New York is "not in compliance." Will innocent restaurateurs in that state be prohibited from serving items legally caught in federal waters off New England or the Carolinas? Will wholesalers be prohibited from selling imports of a moratorium species? This is clearly the intent of the possession language of the law--to force compliance by mass punishment, *something that is even prohibited in the military.*
2. Will interstate commerce be absurdly impacted? The possession language could certainly prevent a packing house in one state from even shipping product through a state where there is a moratorium.
3. Will fisheries be shut down because of political maneuvering for special interests? This is clearly possible with the very subjective by-catch language (fail to return, etc.), and it applies to many more fisheries than menhaden. It might especially hinder the development of the underutilized fisheries we hope will take pressure off heavily-fished species. A single fish of a species important to one state may generate a punitive moratorium which harms large numbers of fishermen in another, and the agenda will be for political purposes, not conservation ones. This is possible, even likely, given the emotionalism of some issues.

I hope that these problems will be addressed, if the Bill goes forward. In addition, H.R. 2134 should make a clear statement that ASMFC is subordinate to the Councils, and that the Council has the authority to supersede any Commission plan at any time. Nor should the Secretary have the authority to reject any Council plan which supersedes a Commission plan for any reason other than violation of the national standards in Magnuson. That, at least, would provide a safeguard and diminish the tendency to politicize fishery management.

Furthermore, the Bill ought to require ASMFC to adopt those same Magnuson standards. They were a vital part of the Magnuson debate, and should not be easily dismissed as irrelevant or inappropriate.

H.R. 2134 is a bill which is potentially very harmful, for all the reasons given. If it is to go forward, I sincerely hope that mechanisms will be put in place to reduce those dangers.

Sincerely,

  
James D. O'Malley  
Executive Director

Cc: Cong. Gerry Studds  
Cong. Jack Reed  
Cong. George Hockbreuckner  
Cong. William Hughes  
Cong. Martin Lancaster  
Cong. Jim Saxton  
Cong. Frank Pallone  
Cong. Chris Smith

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Pt. Judith Fishermen's Co-op  
Shinnecock Fishermen's Co-op  
Pt. Pleasant Fishermen's Co-op  
Belford Fishermen's Co-op  
Seafood Harvesters of New York  
Lund's Fisheries

New Jersey Commercial  
Fishermen's Assn.  
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New Bedford Seafood Co-op





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